7–9–02 Tuesday
Vol. 67 No. 131 July 9, 2002
Pages 45293–45626

Federal Register

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RESERVATIONS: 202–523–4538; or
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–36–AD; Amendment 39–12800; AD 2002–13–12]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –30, –30F, and –40 Series Airplanes, and Model C–9 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –30, and –40 series airplanes and Model C–9 airplanes, that currently requires an inspection to detect chafing of the wiring of the attendants' work light of the aft cabin, and repair of chafed wiring. That AD also requires modification and reidentification of the attendants' work light assemblies of the aft cabin. This amendment revises the applicability of the existing AD. The actions specified by this AD are intended to prevent chafing of the ground wire against the positive contact of the lamp of the attendants' work light of the aft cabin, and consequent arcing or arcing damage to the wiring of the attendants' work light and transformer of the aft cabin. Such arcing or arcing damage could result in short circuits and consequent smoke and fire in the aft cabin area. The actions of this AD are intended to address the identified unsafe condition.

DATES: Effective August 13, 2002.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 03, dated November 21, 2001, as listed in the regulations, is approved by the Director of the Federal Register as of August 13, 2002.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 16, 2002 (66 FR 64133, December 12, 2001).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–24–15, amendment 39–12532 (66 FR 64133, December 12, 2001), which is applicable to certain McDonnell Douglas Model DC–9–10, –30, and –40 series airplanes, and Model C–9 airplanes, was published in the **Federal Register** on March 18, 2002 (67 FR 11952). The action proposed to continue to require an inspection to detect chafing of the wiring of the attendants' work light of the aft cabin, and repair of chafed wiring; and modification and reidentification of the attendants' work light assemblies of the aft cabin; and to revise the applicability of the existing AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Changes to the Final Rule

Note 3 in the final rule has been revised to more specifically define the general visual inspection.

New subparagraph (c)(2) of this AD has been added to explain that certain alternative methods of compliance that have been approved for AD 2001–24–15, amendment 39–12532, are approved for the corresponding requirements of this AD.

The applicability section of this AD has been revised to more clearly identify the affected airplanes.

The Cost Impact section of the proposed AD incorrectly identified 176 airplanes in the worldwide affected fleet. This figure has been revised in the final rule.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 387 Model DC–9–10, –30, and –40 series airplanes, and Model C–9 airplanes of the affected design in the worldwide fleet. The FAA estimates that 278 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 2001–24–15 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $60 per airplane.

This AD adds no new actions or requirements, but only revises the

applicability of the existing AD. Therefore, the estimated cost impact for this AD is unchanged.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12532 (66 FR 64133, December 12, 2001), and by adding a new airworthiness directive (AD), amendment 39–12800, to read as follows:

2002–13–12 McDonnnel Douglas: Amendment 39–12800. Docket 2002–NM–36–AD. Supersedes AD 2001–24–15, Amendment 39–12532.

Applicability: Model DC–9–10, –30, –30F, and –40 series airplanes, and Model C–9 airplanes; certificated in any category; as listed in McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 03, dated November 21, 2001; and equipped with an attendants' work light in the aft cabin.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing or arcing damage to the wiring of the attendants' work light of the aft cabin due to chafing of the ground wire against the positive contact of the lamp of the attendants' work light and transformer of the aft cabin, which could result in short circuits and consequent smoke and fire in the aft cabin area, accomplish the following:

Note 2: Paragraph (a) of this AD merely restates the requirements of paragraph (a) of AD 2001–24–15, amendment 39–12532. As allowed by the phrase, ''unless accomplished previously,'' if those requirements of AD 2001–24–15 have already been accomplished, this AD does not require that those actions be repeated.

Restatement of AD 2001–24–15

(a) For airplanes listed in McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000: Within 1 year after January 16, 2002 (the effective date of AD 2001–24–15), do the actions specified in paragraphs (a)(1) and (a)(2) of this AD, per McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000.

(1) Do a general visual inspection to detect chafing of the wiring of the attendants' work light of the aft cabin. If any chafing is detected, before further flight, repair chafed wiring per the service bulletin.

Note 3: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(2) Modify and reidentify the attendants' work light assemblies of the aft cabin.

New Requirements of This AD

(b) For airplanes listed in McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 03, dated November 21, 2001: Within 1 year after the effective date of this AD, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD, per McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 03, dated November 21, 2002.

(1) Do a general visual inspection to detect chafing of the wiring of the attendants' work light of the aft cabin. If any chafing is detected, before further flight, repair chafed wiring per the service bulletin.

(2) Modify and reidentify the attendants' work light assemblies of the aft cabin.

Note 4: Inspections, repairs, modifications, and reidentifications done before the effective date of this AD per McDonnell Douglas Service Bulletin DC9–33–058, dated June 5, 1973; Revision 1, dated November 26, 1975; or Revision 02, dated January 27, 2000; are considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2001–24–15, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000; and McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 03, dated November 21, 2001; as applicable.

(1) The incorporation by reference of McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 03, dated November 21, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000, was approved previously by the Director of the Federal Register as of January 16, 2002 (66 FR 64133, December 12, 2001).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 13, 2002.

Issued in Renton, Washington, on June 26, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–16677 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–68–AD; Amendment 39–12799; AD 2002–13–11]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC120B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for specified Eurocopter France (ECF) model helicopters that requires installing front and side covers to protect the yaw control. This amendment is prompted by a report of a mobile phone falling between the windshield canopy (canopy) and the cabin floor jamming the yaw control pedal. The actions specified by this AD are intended to prevent an object from sliding between the canopy and the cabin floor, loss of yaw control, and subsequent loss of control of the helicopter.

DATES: Effective August 13, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 13, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for ECF Model EC120B helicopters was published in the **Federal Register** on February 14, 2002 (67 FR 6886). That action proposed to require installing front and side covers to protect the yaw control.

The Direction General De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on this model helicopter. The DGAC advises of a yaw control jamming caused by an object that slid between the canopy and the cabin floor.

ECF has issued Alert Service Bulletin No. 67A005, dated July 30, 2001 (ASB), which specifies installing a front and side protection on the cabin floor to protect the yaw control. The DGAC classified this ASB as mandatory and issued AD No. 2001–386–007(A), dated September 5, 2001, to ensure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except that we have corrected the date of the DGAC AD in Note 4 from September 15, 2001 to September 5, 2001 and added ''Eurocopter'' to paragraph (a) of the AD. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that this AD will affect 44 helicopters of U.S. registry and will take 2 work hours per helicopter to accomplish the required actions. The average labor rate is $60 per work hour. Required parts will cost approximately $851 per helicopter. Based on these figures, we estimate the total cost impact of this AD on U.S. operators to be $42,724.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–13–11 Eurocopter France: Amendment 39–12799. Docket No. 2001–SW–68–AD.

Applicability: Model EC120B helicopters, serial numbers 1001 through 1278, inclusive, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 90 days, unless accomplished previously.

To prevent an object from sliding between the canopy and the cabin floor, loss of yaw control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Install front and side covers (protections) to protect the yaw control in accordance with the Accomplishment Instructions, paragraph 2.B., Eurocopter Alert Service Bulletin No. 67A005, dated July 30, 2001 (ASB), except the correct reference to the Aircraft Maintenance Manual in subparagraph 2.B.2 of the ASB is 20–10–00, 3–8. If the helicopter has flight controls at both the pilot and co-pilot stations, front and side protections are required at both stations.

Note 2: Figure 1 of the ASB depicts the right-hand side of the cockpit.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) Installing the front and side covers (protections) to protect the yaw control shall be done in accordance with Accomplishment Instructions, paragraph 2.B., Eurocopter Alert Service Bulletin No. 67A005, dated July 30, 2001 (ASB). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 13, 2002.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2001–386–007(A), dated September 5, 2001.

Issued in Fort Worth, Texas, on June 25, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–16678 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30318; Amdt. No. 436]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This amendment adopts miscellaneous amendments to the requirement IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends; suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequency and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on June 28k, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, August 8, 2002.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 436, Effective Date: August 8, 2002; Final 06/24/2002]

From	To	MEA
§ 95.1001 Direct Routes—U.S.		
Atlantic Route—A761 Is Added To Read		
Downt, OA FIX	Etoca, AO FIX	31000
Etoca, OA FIX	Foggs, AO FIX	31000
Foggs, OA FIX	Galwy, AO FIX	31000
Galwy, OA FIX	Hanri, AO FIX	31000
Hanri, OA FIX	Perie, AO FIX	31000
Perie, OA FIX	Satly, AO FIX	31000
Satly, OA FIX	Torry, FL FIX	31000
Atlantic Route—R511 Is Added To Read		
Azezu, OA FIX	Cowri, AO FIX	5500
Cowri, OA FIX	Foggs, AO FIX	5500
Foggs, OA FIX	Eltee, AO FIX	5500
Eltee, OA FIX	Odeal, AO FIX	5500
Bahamas Route—G446 Is Added To Read		
Oldey, SC FIX	Perie, AO FIX	2500
Perie, OA FIX	Carps, FL FIX	2500
Carps, FL FIX	Scoby, FL FIX	2500
Scoby, FL FIX	Nucar, BS FIX	2500
Nucar, BS FIX	Omaly, AO FIX	5500
Omaly, OA FIX	Lasee, AO FIX	5500
Lasee, OA FIX	Alute, AO FIX	5500
Alute, OA FIX	Rinny, AO FIX	5500
Rinny, OA FIX	Grand Turks, BS VORTAC	5500
§ 95.6001 Victor Routes—U.S.		
§ 95.6013 VOR Federal Airway 13 Is Amended To Read in Part		
Ascot, TX FIX	Solon, TX FIX	*4000
*1300–MOCA		
§ 95.6014 VOR Federal Airway 14 Is Amended To Read in Part		
Chisum, NM VORTAC	Onsom, NM FIX	
	E BND	*7000
	W BND	*7500
*6000–MOCA		
Onsom, NM FIX	Winns, TX FIX	*8000
*6300–MOCA		
Winns, TX FIX	Flatt, TX FIX	*8000
*5200–MOCA		
Flatt, TX FIX	Shalo, TX FIX	5100
§ 95.6020 VOR Federal Airway 20 Is Amended To Read in Part		
Ascot, TX FIX	Solon, TX FIX	*4000
*1300–MOCA		
§ 95.6040 VOR Federal Airway 49 Is Amended To Read in Part		
Vulcan, AL VORTAC	*Bount, AL FIX	3100
*4200–MRA		
Bount, AL FIX	*Folso, AL FIX	**3100
*7000–MRA		
**2400–MOCA		
Folso, AL FIX	Decatur, AL VOR/DME	*3000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 436, Effective Date: August 8, 2002; Final 06/24/2002]

From	To	MEA
*2400–MOCA		
Elked, AL FIX	Nashville, TN VORTAC	*3500
*2700–MOCA		
Bowling Green, KY VORTAC	Mystic, KY VOR	2700
§ 95.6105 VOR Federal Airway 105 Is Amended To Read in Part		
Phoenix, AZ VORTAC	Karlo, AZ FIX	10000
Karlo, AZ FIX	Drake, AZ VORTAC	*12000
*10000–MOCA		
§ 95.6154 VOR Federal Airway 154 Is Amended To Read in Part		
Ocone, GA FIX	Savannah, GA VORTAC	*3000
*1700–MOCA		
§ 95.6157 VOR Federal Airway 157 Is Amended To Read in Part		
Alma, GA VORTAC	Lotts, GA FIX	*4000
*1700–MOCA		
Lotts, GA FIX	Allendale, SC VOR	*9000
*1700–MOCA		
§ 95.6159 VOR Federal Airway 159 Is Amended To Read in Part		
Cross City, FL VORTAC	Greenville, FL VORTAC	2000
§ 95.6163 VOR Federal Airway 163 Is Amended To Read in Part		
Brownsville, TX VORTAC	Manny, TX FIX	1500
Manny, TX FIX	Ascot, TX FIX	*5000
*1500–MOCA		
Ascott, TX FIX	Solon, TX FIX	*4000
*1300–MOCA		
Yenns, TX FIX	San Antonio, TX FIX	*3000
*2500–MOCA		
San Antonio, TX VORTAC	Slimm, TX FIX	*3500
*2900–MOCA		
Slimm, TX FIX	Lampasas, TX VORTAC	*3500
*3000–MOCA		
§ 95.6222 VOR Federay Airway 222 Is Amended To Read in Part		
Lake Charles, LA VORTAC	Maxon, LA FIX	2000
Lagrange, GA VORTAC	*Tiroe, GA FIX	2600

From	To	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7056 Jet Route No. 56 Is Amended To Read in Part			
Wasatch, UT VORTAC	Hayden, CO VOR/DME	25000	45000
§ 95.7058 Jet Route No. 58 Is Amended To Read in Part			
Milford, UT VORTAC	Farmington, NM VORTAC	33000	45000
§ 95.7086 Jet Route No. 86 Is Amended To Read in Part			
Peach Springs, AZ VORTAC	Bavpe, AZ FIX	18000	45000
Bavpe, AZ FIX	Winslow, AZ VORTAC	18000	45000
§ 95.7180 Jet Route No. 180 Is Amended To Read in Part			
Humble, TX VORTAC	Daisetta, TX FIX	18000	45000
Daisetta, TX VORTAC	Cidor, LA FIX	18000	45000
Cidor, LA FIX	Fosin, LA FIX	19000	45000
Fosin, LA FIX	Sawmill, LA VOR/DME	18000	45000
Sawmill, LA VOR/DME	Little Rock, AR VORTAC	18000	45000
§ 95.7614 Jet Route No. 614 Is Amended To Read in Part			
Sarasota, FL VORTAC	Lee County, FL VORTAC	18000	45000

From	To	MEA	MAA
Lee County, FL VORTAC	Dolphin, FL VORTAC	18000	45000
§ 95.7616 Jet Route No. 616 Is Amended To Read in Part			
Sarasota, FL VORTAC	LaBelle, FL VORTAC	18000	45000
LaBelle, FL VORTAC	Dolphin, FL VORTAC	18000	45000

From	To	Changeover points	
		Distance	From
§ 95.8005 Jet Routes Changeover Points Airway Segment J–56 Is Amended To Modify Changeover Point			
Wasatch, UT VORTAC	Hayden. CO VOR/DME	66	Wasatch
J–180 Is Amended To Modify Changeover Point			
Sawmill, LA VOR/DME	Little Rock, AR VORTAC	105	Sawmill

[FR Doc. 02–16894 Filed 7–8–02; 8:45 am]
BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Delegations of Authority

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a rule to re-delegate authority formerly delegated to the Directors of the Division of Trading and Markets and the Division of Economic Analysis, and their respective designees, to the respective Directors and their designees of two newly established operating divisions of the Commission: The Division of Market Oversight and the Division of Clearing and Intermediary Oversight. The reorganized divisions will more effectively implement the provisions of the Commodity Futures Modernization Act of 2000.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Harold L. Hardman, Assistant General Counsel or Julian E. Hammar, Attorney, Office of General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: 202–418–5120. E-mail: (*hhardman@cftc.gov*) or (*jhammar@cftc.gov*).

SUPPLEMENTARY INFORMATION:

I. Delegations

Congress passed and the President signed into law the Commodity Futures Modernization Act of 2000 (''CFMA''), amending the Commodity Exchange Act.[1] In order to more effectively implement its provisions, the Commission has reorganized its operating divisions. Under the reorganization plan, the Division of Trading and Markets and the Division of Economic Analysis have been reconfigured into two new divisions: The Division of Market Oversight and the Division of Clearing and Intermediary Oversight.

The Commission's rules in Chapter I of Title 17 of the Code of Federal Regulations contain numerous specific delegations of authority from the Commission to the Directors of the Division of Trading and Markets and/or the Division of Economic Analysis, and their respective designees. The Commission effective immediately is adopting new rule 140.100, which provides that all delegations of authority from the Commission to the Directors of the Division of Trading and Markets and/or the Division of Economic Analysis, and their respective designees, as currently set forth in Chapter I of Title 17 of the Code of Federal Regulations, are delegated jointly to the respective Directors of the Division of Market Oversight and the Division of Clearing and Intermediary Oversight, and their respective designees.[2] The conditions of, and limitations upon, the original delegations of authority remain unchanged.

II. Related Matters

Administrative Procedure Act

The Commission has determined that this delegation of authority relates solely to agency organization, procedure and practice. Therefore, the provisions of the Administrative Procedure Act that generally require notice of proposed rulemaking and that provide other opportunities for public participation are not applicable.[3] The Commission further finds that, because the rules have no adverse effect upon a member of the public, there is good cause to make them effective immediately upon publication in the **Federal Register**.

List of Subjects in 17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and in particular, sections 2(a) and 8a,[4] as amended by the Commodity Futures Modernization Act of 2000, appendix E of Public Law 106–554, 114 Stat. 2763 (2000), the Commission amends part 140 of title 17 of the Code of Federal Regulations as follows:

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

1. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2 and 12a.

2. Part 140 of 17 CFR is amended by adding new § 140.100 to subpart B to read as follows:

[1] The Commodity Exchange Act may be found at 7 U.S.C. 1 *et seq.* (2000) as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

[2] Section 15 of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000, provides that before promulgating a regulation under this Act or issuing an order, the Commission shall consider the costs and benefits of the action of the Commission. This rule governs internal agency organization, procedure, and practice, and therefore the Commission finds that none of the considerations enumerated in Section 15(a)(2) of the Act, as amended, are applicable to this rule.

[3] 5 U.S.C. 553 (1994).

[4] 7 U.S.C. 2(a) and 12a (2000).

§ 140.100 Delegations of authority.

The Commission hereby re-delegates the delegations of authority made to the Directors of the Division of Trading and Markets and/or to the Division of Economic Analysis, and their respective designees, in all instances as they occur throughout this chapter, jointly to the respective Directors of the Division of Market Oversight and the Division of Clearing and Intermediary Oversight, and their respective designees.

Issued in Washington, DC, on July 2, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–17179 Filed 7–8–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket Nos. 98F–0052 and 99F–0187]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Neotame

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of neotame as a nonnutritive sweetener in food. This action is in response to two petitions filed by Monsanto Co., which subsequently sold the rights to the petitions to the NutraSweet Co.

DATES: This rule is effective July 9, 2002. Submit objections and requests for a hearing by August 8, 2002. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in 21 CFR 172.829, as of July 9, 2002.

ADDRESSES: Submit written objections and requests for a hearing to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic objections to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3106.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

FDA published notices in the **Federal Register** on February 10, 1998, and February 8, 1999 (63 FR 6762 and 64 FR 6100, respectively), announcing that food additive petitions, FAP 8A4580 and FAP 9A4643, had been filed by Monsanto Co., Skokie, IL 60077. The petitions propose amending the food additive regulations to provide for the safe use of neotame as a nonnutritive sweetener for tabletop use (FAP 8A4580) and for general-purpose use in food (FAP 9A4643) where standards of identity do not preclude such use. Subsequently, the rights to the petitions were sold to the NutraSweet Co., 699 North Wheeling Rd., suite 103, Mount Prospect, IL 60056. This document grants the petitions via a regulation approving the general-purpose food use of neotame.

II. Safety Evaluation

A. Chemistry and Intake Considerations of Neotame

Neotame is the common or usual name for the chemical *N*-[*N*-(3,3-dimethylbutyl)-L-α-aspartyl]-L-phenylalanine-1-methyl ester (CAS Reg. No.165450–17–9). It is synthesized by reductive *N*-alkylation of L-phenylalanine-L-α-aspartyl methyl ester with 3,3-dimethylbutyraldehyde. According to the petitioner, neotame has a sweetening potency that is approximately 7,000 to 13,000 times that of sucrose, depending on its food application (Refs. 1 and 2).

The peptidyl linkage in neotame is stabilized by the *N*-alkyl substituent and is resistant to hydrolysis under typical use and storage conditions. Additionally, the *N*-alkyl substituent effectively prevents the common dipeptide cyclization reaction that results in the formation of a diketopiperazine derivative. The data from stability studies submitted by the petitioner show that the degradation of neotame in aqueous solutions is pH-, time-, and temperature-dependent. Based upon data from these stability studies on neotame, the agency concludes that minor decomposition of neotame could occur in neotame-containing foods only when stored under conditions that are not considered typical for a commercial product (Refs. 1 and 2).

The agency has determined the estimated daily intake (EDI) at the 90th percentile for neotame as a general-purpose sweetener to be 0.10 milligram per kilogram (mg/kg) body weight per day (bw/d) for consumers of all ages (eaters only) and 0.17 mg/kg bw/d for 2 to 5 year olds (eaters only). The corresponding mean intakes are 0.04 mg/kg bw/d and 0.05 mg/kg bw/d, respectively (Refs. 2 and 3).

B. Nature and Extent of Neotame Safety Studies Database

In support of the safety of neotame, the petitioner submitted, within the two petitions, a combined total of 113 preclinical, clinical, and special studies, plus an additional 32 exploratory and screening studies in Food Master File No. 575. All pivotal preclinical studies were conducted in compliance with FDA's ''good laboratory practice'' regulations in 21 CFR part 58.

The preclinical (animal) studies include short-term, subchronic, and chronic dietary toxicity tests in the rat, mouse, and dog; multi-generation

reproduction and developmental studies in the rat; teratology studies in the rat and rabbit; and lifetime/carcinogenicity studies in the rat and mouse. The genotoxicity of neotame, its metabolites, and decomposition products, are also evaluated in several tests using both in vitro and in vivo assay systems. Extensive metabolism and pharmacokinetic measurements were carried out in all animal species studied. The clinical (human) studies tested the response/acceptance to orally administered neotame in both men and women during short-term (e.g., acute, single-dosing) and longer-term (e.g., up to 13 weeks, repeat-dosing) periods. Pharmacokinetic (PK) measurements also were carried out in a number of these studies (Ref. 4).

Additionally, the petitioner provided three position papers in response to FDA questions. These position papers address: (1) The potential behavioral and neurotoxic effects of neotame, (2) the significance of elevated serum (hepatic) alkaline phosphatase activity in neotame-treated dogs as a measure of toxicity, and (3) body weight gain decrement in mice ingesting neotame. The key aspects of these position papers are discussed, as appropriate.

C. Toxicology/Safety Assessment of Neotame

1. Metabolism and Pharmacokinetics of Neotame

As a component of the toxicological testing program on neotame, the petitioner conducted an extensive series of metabolism and PK studies. These studies were designed to assess: (1) The absorption of neotame; (2) the elimination, distribution, and potential tissue accumulation of neotame; (3) the effects of neotame on drug metabolizing enzymes; and (4) the metabolites of neotame in rodents (rats and mice), dogs, rabbits, and humans.

a. *Absorption of neotame*. In all species studied, including humans, the agency finds that the absorption of ingested neotame occurs almost entirely in the small intestine. In the animal studies, the absorption of neotame was determined under fasting conditions using a dose level that was approximately 150 times greater than the 90th percentile estimated daily intake (EDI) of neotame for humans. Under these conditions, the amount of administered dose absorbed is reported to range from 18 to 38 percent in the rat, 15 to 44 percent in the rabbit, and 40 to 51 percent in the dog. These studies also indicate that, when mixed with the diet, the absorption of neotame is reduced. In the human clinical studies, the absorption of neotame approaches 100 percent in healthy male and female subjects when administered following an overnight fast and at dose levels ranging from one to five times the 90th percentile EDI. Individual absorption levels range from 68 to 126 percent (Ref. 5).

b. *Elimination, distribution, and potential tissue accumulation of neotame*. The agency estimates that approximately 40 percent of the systemic elimination of ingested neotame and metabolites occurs via the urine, and the remainder is eliminated via the fecal route. In a whole-body radiography study in the rat, following a gavaged dose of radiolabled neotame and serial sacrifice at timed intervals, post-dosing, the highest levels of radioactivity are associated with the intestinal tract, the liver, and the kidney. At final sampling, no residual radioactivity is detected in peripheral tissues, with some residual activity associated with the intestinal tract. No organs or tissues, including the brain, eye, and skin, concentrate or store radiolabled neotame or its metabolites.

Further evidence for the lack of accumulation of neotame at expected levels of human intake is found in the analysis of PK parameters evaluated during a 13-week dog study. In dogs consuming dietary neotame at dose levels of 1,200 to 2,000 mg/kg bw/d, there is an indication of saturation of an elimination pathway that could lead to possible accumulation. However, these levels are at least 10,000 times greater than the 90th percentile EDI (0.1 mg/kg bw/d) of neotame for humans. This effect is not seen in dogs from the next lower treatment group (600 mg/kg bw/d), a level approximately 6,000 times above the 90th percentile EDI. Based on these findings, the agency concludes there is no concern for possible accumulation of neotame or its metabolites at expected human intake levels (Refs. 4 and 5).

c. *Effect of neotame on drug metabolizing enzymes*. The rat is generally considered an appropriate animal model to assess the effects of xenobiotics on phase I (i.e., cytochrome P–450 or mixed-function amine oxidase microsomal enzyme systems[1]) and phase II (i.e., conjugation or biotransformation reactions involving glucuronidation, sulfation, acetylation, or glutathione-S- transferase reactions) metabolism. Following a 14-day period during which dietary neotame was fed at 0 (control), 100, 300, or 1,000 mg/kg bw/d, rats were sacrificed and in vitro assays performed on isolated liver microsomal pellets. The agency concludes that, when compared against a positive control (phenobarbital, a known enzyme inducer), neotame does not induce P–450 microsomal mixed function oxidase metabolizing enzymes at any dose level administered during the in vivo phase of the study. In evaluating the effects of neotame on phase II metabolism, the agency notes that livers from rats in the 1,000 mg/kg bw/d treatment group show a statistically significant depression in phase II metabolism endpoints. However, at the next lower dose of 300 mg/kg bw/d, which is approximately 3,000 times the 90th percentile EDI for neotame for humans, there are no effects on these same endpoints (Ref. 5).

d. *Metabolites of neotame*. The initial step in the metabolism of neotame in rats, dogs, rabbits, and humans is de-esterification to *N*-[*N*-(3,3–dimethylbutyl)-L-α-aspartyl]-L-phenylalanine (DMB-Asp-Phe, coded in the petition as NC–00751) by Ca^{++}-dependent pancreatic esterases or after absorption by plasma esterases. De-esterification of neotame is similar in all species studied, including humans, although in the rat and rabbit this conversion occurs at a faster rate than in the dog and human. The de-esterified metabolite (NC–00751) is rapidly cleared from the plasma and excreted via the bile duct or in urine (Ref. 5). A small percentage of NC–00751 may undergo peptide-bond hydrolysis to form metabolites of dimethylbutylaspartate. The 3,3-dimethylbutyl portion of DMB-Asp-Phe is then oxidized to 3,3-dimethyl-butyric acid. This is followed by conjugation with glucuronic acid or with carnitine (a minor pathway).

Methanol release results from the de-esterification of neotame and occurs more rapidly in the rat and rabbit than in the dog and human. The agency concludes that at the 90th percentile EDI for neotame, exposure to resultant methanol will be insignificant, i.e., not more than 0.008 mg/kg bw/d. This exposure level is of no toxicological concern because humans are exposed to much greater levels of methanol intake from their daily diets (Refs. 4 and 5).

Based on neotame metabolism studies in the rat and dog, FDA concludes that some intestinal microvillar peptidase activity occurs in the gut, which results in the formation of other minor plasma metabolites of neotame, including phenylalanine (Ref. 5). Further review indicates that approximately 13 to 17

[1] Sipes, I. G. and Gandolfi, A. J., ''Biotransformation of Toxicants,'' chapter 4, pp. 88–109, in Casarett and Doull's Toxicology: *The Basic Science of Poisons*, 4th ed., edited by M. O. Amdur, J. Doul, and C. D. Klaassen, McGraw Hill, Inc., 1993.

percent of the total available phenylalanine in the ingested neotame is released into the plasma after absorption; the remainder is eliminated in feces and urine as DMB-Asp-Phe. The agency has estimated the amount of phenylalanine presented to the body from the ingestion of neotame. The phenylalanine content of neotame is 44 percent by weight. Given that the 90th percentile neotame EDI for a 60 kg adult is 0.10 mg/kg bw/d or 6 mg/d, and for a 2 to 5 year old (20 kg) child is 0.17 mg/kg bw/d or 3.4 mg/d, the estimated 90th percentile phenylalanine intake is 2.6 mg and 1.5 mg, respectively.

The agency notes that, for healthy adults, the daily dietary intake of phenylalanine may range from 2.5 to 10 grams per person per day (g/p/d), while that for a phenylketonuric (PKU) homozygous child (20 kg) may range from 0.4 to 0.6 g/p/d (Koch and Wenz[2]). Thus, the amount of phenylalanine from the 90th percentile intake of neotame is trivial compared to that from the normal adult diet. Even for the PKU homozygous child, the incremental amount of phenylalanine intake that can be expected from neotame is insignificant, i.e., equivalent to no more than 0.3 to 0.4 percent of the daily phenylalanine intake of the PKU homozygous child (Ref. 5). The agency concludes that the potential intake of phenylalanine that may result from use of neotame as a general-purpose sweetener does not pose any safety concern (Refs. 4 and 5).

Based on reviews of the metabolism and pharmacokinetic studies on neotame, the agency concludes that the metabolism of neotame is qualitatively similar across all species studied. Furthermore, there is no evidence that, at expected levels of intake, neotame or its metabolites will accumulate in the body or that ingestion of neotame will have any adverse effect in the body on Phase I and II metabolism. The metabolites of neotame are well characterized, and the potential intakes of metabolites, such as methanol and phenylalanine, are of no toxicological consequence. Therefore, the agency's review of the metabolism and pharmacokinetic studies of neotame does not raise any safety concerns (Refs. 4 and 5).

2. Critical Toxicology Studies and Issues

FDA reviewed all studies and supplemental information submitted by the petitioner. During its review, the agency determined that certain studies were more important than others to a regulatory decision on neotame. This determination was based on the nature of the endpoints investigated in these studies (i.e., reproductive and developmental effects, long-term exposure, chronic toxicity, carcinogenic potential, and human tolerance), and on specific issues presented by these studies. The critical studies and issues presented by the studies are: (1) The 2-generation reproduction study in rats—neurotoxicity and behavioral effects, (2) the chronic (52-week) dog study—toxicological significance of increased serum (hepatic) alkaline phosphatase levels, (3) the 104-week mouse carcinogenicity study—body weight gain decrement effect, (4) the 104-week rat carcinogenicity study—body weight gain decrement effect at all dose levels tested, (5) the chronic (52-week) rat feeding study—body weight gain decrement effect, and (6) the human clinical trials—human tolerance to neotame.

a. *A 2-generation reproduction study in the rat—neurotoxicity and behavioral effects.* Reproductive performance and fertility were assessed over two generations in CD (cesarean derived) rats fed diets containing neotame at levels of 0 (control), 100, 300, or 1,000 mg/kg bw/d. Each treatment group consisted of 28 males and 28 females. Animals were mated, the resultant offspring weaned, and the F1 generation animals selected and allowed to mature for 10 weeks and then mated. The F2 litters were terminated, post-weaning. Under the conditions of this study, the agency concludes that neotame has no effects on the reproduction or fertility of rats exposed to neotame at levels up to 1,000 mg/kg bw/d for two generations. Nor are there any treatment effects on measures of physical development, e.g., pinna unfolding, hair growth, tooth eruption, or eye opening (Refs. 4 and 6).

The 2-generation study included tests of motor activity and cognitive function. General motor activity was measured in F1 offspring by counting breaks in a pair of infrared light beams over a 12-hour period, while cognitive function was assessed by recording swim times up to 60 seconds maximally in six consecutive trials per animal in a water-filled Y-maze (Ref. 7). While the petitioner concludes there were no significant treatment effects on motor activity in F1 male and female offspring, the agency's analyses of pertinent data show a statistically significant reduction in motor activity among F1 males from the 1,000 mg/kg bw/d neotame treatment group. No effects are noted on motor activity in F1 females at any dose level.

With regard to results from the swim-maze tests that were conducted in F1 offspring at approximately 24 to 28 days of age, both the petitioner and the agency conclude that there is a statistically significant increase in mean swimming time (an indicator of reduced performance) to the ''correct'' arm of the Y-maze in F1 males from the 1,000 mg/kg bw/d group. Specifically, this increased swim time is noted in two of six trials in the F1 males from the high dose group. While an increase in swim time is also noted for one of six trials in F1 males from the 300 mg/kg bw/d dose group, this singular observation is not accompanied by any other indication of treatment-related behavioral changes and therefore is not considered to be indicative of a biologically relevant effect. As with motor activity, there are no effects on cognitive performance (as measured by swim maze times) noted in F1 female offspring from any treatment group.

The F1 offspring from the 2-generation reproduction study also were subjected to specific tests that measured the development of auditory and visual responses. The agency's evaluation of results on auditory startle, pupil closure, and visual placing show no treatment-related effects in F1 males or females at any level of neotame tested.

The finding of statistically significant effects on two separate behavioral tests (i.e., motor activity and swim maze times) in F1 males from the 1,000 mg/kg bw/d dose group supports the conclusion that this dose is an effect level. Based on the findings from the studies of motor activity and cognitive function, the agency considers the 300 mg/kg bw/d dose to be a no observed adverse effect level (NOAEL) for these endpoints (Refs. 4 and 7).

Early in its evaluation of the neotame safety database, the agency determined that the petitioner should provide a more specific assessment addressing the potential neurotoxicity and behavioral effects of neotame. In response to the agency's request, the petitioner submitted a position paper entitled ''Neotame Does Not Cause Any Behavioral or Neurotoxic Effects'' (Ref. 8). This document contains summaries and discussions of data and information from two principal sources. The first involves several ''key'' preclinical studies (12 in all) and 4 clinical studies from the neotame studies database. The second source of information discussed in the position paper is a series of 20 publications that are primarily related to aspartame. Collectively, these 20 publications provide little information

[2] Koch, R. and Wenz E. J., ''Aspartame Ingestion by Phenylketonuric Heterozygous and Homozygous Individuals,'' chapter 30, pp. 593–603, in *Physiology and Biochemistry*, edited by Stegink, L. D. and L. J. Filer, Jr., 1984.

that is relevant to the agency's overall safety assessment of neotame and are not discussed further.

With regard to the ''key'' animal studies, the petitioner states in its position paper that these studies incorporated clinical observations/testing enhancements as ''effective procedures for detecting neurotoxic effects.'' During the ante mortem phase of the animal studies, these enhancements included detailed physical, behavioral, and clinical observations to detect signs of neurological disorder, behavioral abnormality, physiological dysfunction, and other signs of nervous system toxicity. Post mortem enhancements included extensive histopathological evaluations of brain, spinal cord, and peripheral nerves.

FDA has reviewed thoroughly all of the preclinical and clinical studies discussed in the position paper. With the exception of the 2-generation rat reproduction study in which statistically significant decreases in motor activity and statistically significant increases in swim times are observed in F1 offspring males at 1,000 mg/kg bw/d, the preclinical studies do not show behavioral or neurotoxic effects associated with the ingestion of neotame.

Based on available preclinical and clinical information from the neotame studies database, the agency concludes that there is no concern for potential neurotoxic or behavioral effects in humans from the ingestion of neotame as a general-purpose sweetener in foods. This conclusion is reinforced further by the NOAEL of 300 mg/kg bw/d established for motor activity and cognitive performance in F1 males from the 2-generation reproduction study, a dose level that is at least 3,000 times greater than the 90th percentile EDI of 0.1 mg/kg bw/d (Refs. 4 and 7).

b. *Chronic (52-week) dog study—toxicological significance of elevated serum (hepatic) alkaline phosphatase.* Beagle dogs were fed diets containing neotame at levels of 0 (control), 20, 60, 200, or 800 mg/kg bw/d over a 52-week period. Detailed data were collected on animal survival, growth, food intake, clinical chemistries, hematology, urinalyses, and gross organ pathology and histopathology. At the conclusion of the study, a limited number of dogs from the neotame treatment groups were placed on a control diet for an additional 4-week ''reversibility period.'' During the agency's review of this study, a question arose about the toxicological significance of increased serum alkaline phosphatase (ALP) levels (of hepatic origin) noted in female dogs from the 200 mg/kg bw/d dose group and in both sexes at the 800 mg/kg bw/d dose group. Other effects noted were statistically significant dose-related increases in absolute liver weights and in relative liver weights (liver to brain weight ratio) in female dogs in the 200 and 800 mg/kg bw/d dose groups. There was no evidence of histopathological changes in the liver, brain, sciatic nerve, and spinal cord or in other organs or tissues examined from neotame-treated dogs.

Because elevated serum ALP levels had also been observed in shorter duration studies (2-week and 13-week) in dogs ingesting neotame containing diets, the agency requested that the petitioner provide further clarification on this matter. In its response, the petitioner submitted a position paper entitled ''Increases in Serum Alkaline Phosphatase in the Dog Are Not Associated with Target Organ Toxicity,'' together with several publications related to hepatotoxicity and serum ALP activity (Ref. 9). In this position paper, the petitioner reasons that the increased serum ALP levels observed in neotame-treated dogs are not due to a hepatotoxic response, but to a ''nonspecific, physiological response'' to the high doses of neotame.

FDA conducted further statistical analyses on the liver weight parameters mentioned previously. Based on these analyses, the agency concludes that the means for these liver effects from the 200 and 800 mg/kg bw/d dose groups are statistically significantly higher than the means for the 0 (control), 20, and 60 mg/kg bw/d treatment groups. Furthermore, there are no statistically significant differences between the 0 (control), 20, and 60 mg/kg bw/d dose group means for any of the liver weight parameters that were evaluated.

From the review of the data from the 52-week dog study and the supplemental information submitted by the petitioner in its position paper, the agency concludes that the changes in serum ALP levels are most likely due to a nontoxic response to the higher levels (200 and 800 mg/kg bw/d) of administered neotame. This conclusion is based on the following: (1) There are no significant effects from neotame on other liver enzymes (e.g., alanine aminotransferase, aspartate aminotransferase, gamma glutamyl transferase), (2) serum albumin levels are not decreased in neotame-treated dogs (a decrease would have been an indicator of chronic liver toxicity), (3) serum bilirubin levels are normal in both sexes at high doses of neotame (an increase would have been seen if cholestasis was occurring), and (4) the liver in both sexes and at all dose levels appears normal on histopathological examination. In this 52-week dog study, FDA establishes a no observed effect level (NOEL) of 60 mg/kg bw/d, based on liver effects (e.g., serum (hepatic) alkaline phosphatase and relative liver weights) as the most sensitive endpoints (Refs. 4 and 10).

c. *A 104-week mouse carcinogenicity study—body weight gain decrement effect.* CD–1 mice were fed neotame-containing diets for 104 weeks at levels of 0 (control), 50, 400, 2,000, or 4,000 mg/kg bw/d. Based on an evaluation of the histopathological data from this carcinogenicity study, FDA concludes that, under the conditions of the study, doses of neotame up to 4,000 mg/kg bw/d administered to male and female CD–1 mice for up to 2 years did not induce neoplastic lesions (Ref. 11).

Although there was no evidence of carcinogenicity in mice exposed to neotame for 104 weeks, during the agency's review of other endpoints, we noted negative effects on body weight gain (and thus body weight) in both sexes. In light of only small decreases in cumulative food consumption, the agency was concerned about the potential toxicological significance of the decrease in body weight gain. In response to the agency's request for further clarification on this issue, the petitioner submitted a position paper entitled ''In the Mouse Carcinogenicity Study With Neotame Small Changes in Body Weight Gain at Some Intervals in Female Mice at 50 mg/kg bw Relative to Controls Are Due to a Decrease in Food Consumption'' (Ref. 12). In its analysis, the petitioner states that the mouse is not a reliable model for determining the relationship between body weight gain and food consumption. Reasons cited include the small differences in body weight gain over a lifetime in mice, both in absolute terms and in proportion to initial body weights at the start of a study, and well-known difficulties in obtaining accurate measures of food intake for mice (e.g., mice frequently spill food from their food cups and contaminate their food with feces and urine). The petitioner reiterated its belief that the body weight gain decrements noted in mice during the 104-week study were due to a small but consistent reduction in food consumption which is attributable to poor diet palatability and should not be viewed as a toxicological response to neotame.

In further evaluation of this body gain weight decrement issue, FDA subjected the data on body weight, body weight gain, and adjusted (for neotame content)

food intake to extensive statistical evaluation. Using an analysis of covariance model and pair-wise dose comparisons of body weights and body weight gain, the agency notes statistically significant effects for the 400, 2,000, and 4,000 mg/kg bw/d dose groups. Based on these analyses, the agency concludes that the body weight gain decrement effect in both male and female mice in the three highest dose groups is not accounted for by the small decreases in food consumption. However, in the 50 mg/kg bw/d treatment group, the effects on body weight and body weight gain are not statistically different from controls. Based on the detailed statistical evaluation of data pertinent to the body weight gain decrement noted in the 104-week dietary carcinogenicity study in mice, the agency establishes a NOEL of 50 mg/kg bw/d for this endpoint (Refs. 4 and 10).

d. *A 104-week rat carcinogenicity study—body weight gain decrement effect at all dose levels tested.* A 104-week rat carcinogenicity study (with an in utero phase) was conducted during which neotame was fed at 0 (control), 50, 500, or 1,000 mg/kg bw/d. Based on a thorough evaluation of the histopathological data from this carcinogenicity study, FDA concludes there is no evidence of neotame-induced neoplastic lesions in rats ingesting diets containing neotame at levels up to 1,000 mg/kg bw/d for 104 weeks (Ref. 11).

During its review of the 104-week rat carcinogenicity study, the agency noted effects on body weight gain (and thus body weight) in both sexes of neotame-treated rats at all dose levels tested. Statistically significant decreases in cumulative body weight gains were observed at various intervals throughout the study. At week interval 0 to 52, cumulative body weight gains were 9 to 11 percent less and 13 to 19 percent less, respectively, in neotame-treated male and female rats, than in control animals. Similar effects were noted at week intervals 0 to 78 and 0 to 104, i.e, cumulative body weight gains ranging from 10 to 13 percent less in treated males and 17 to 20 percent less in treated females. In reporting this information, the petitioner suggests that the lower body weights and lower body weight gains among neotame-treated rats can be attributed to reduced food intake due to reduced palatability of the diets containing neotame.

The agency, however, based on an analysis of the food intake data, concludes that the decreases in adjusted (for neotame content) food intake among the neotame-treated rats are small and do not fully explain the magnitude of the differences in body weight and body weight gain observed in these animals at week 52 and thereafter up to week 104. In view of the significant body weight gain decrement effect observed in all neotame treatment groups during the 104-week rat carcinogenicity study, a NOEL cannot be established. Lacking a suitable explanation for this effect based on decreased food intake (as argued by the petitioner), the agency considered the body weight gain decrement effect unresolved by the 104-week rat study (Refs. 4 and 10).

e. *Chronic (52-week) rat feeding study—body weight gain decrement effect.* In order to resolve the body weight gain decrement issue in rats, the agency carried out a thorough analysis of data from a 52-week rat feeding study. This study employed a wide range of neotame dose levels, two of which were below the lowest dose tested in the 104-week rat carcinogenicity study (as discussed in section II.C.2.d of this document). The results of this analysis are presented in the following paragraphs.

In the chronic (52-week) rat feeding study (with an in utero phase) rats received neotame at 0 (control), 10, 30, 100, 300, or 1,000 mg/kg bw/d. Except for body weight and body weight gain, there were no statistically significant treatment-related effects of neotame during this 52-week feeding study. With respect to both body weight and body weight gain, female rats appear to be more sensitive than males.

In regard to body weight, at the end of the 52-week study, body weights in females from the 100, 300, and 1,000 mg/kg bw/d groups were statistically significantly lower than those of control female rats. However, the body weights of females from the 10 and 30 mg/kg bw/d groups were not statistically different from control females. Among males, only the 100 mg/kg bw/d group had statistically significant body weight differences from control male rats.

As for cumulative body weight gains during the 0 to 52-week interval, statistically significant decreases are noted in treated females, compared to controls, only from the 300 and 1,000 mg/kg bw/d treatment groups. While the body weight gains in females from the 100 mg/kg bw/d are lower than in control female rats, this difference is not statistically significant. Compared with controls, there are no significant differences in cumulative body weight gains in females from the two lowest treatment groups (10 and 30 mg/kg bw/d) for the 0 to 52-week interval. Cumulative body weight gains in male rats from the 30, 100, 300, and 1,000 mg/kg bw/d neotame treatment groups, while somewhat lower than controls, are not statistically different. As noted in the 104-week carcinogenicity study, female rats in the 52-week dietary study were more sensitive to body weight gain decrement effects than males.

FDA performed a detailed analysis of the results from the 52-week dietary rat study and concludes that this study provides an adequate basis to assess the body weight gain decrement effect noted in the 104-week carcinogenicity rat study for four reasons. First, the range of neotame dose levels studied in the 52-week study is comparable to the doses tested in the 104-week study. Second, in each study, the female rat is more sensitive. Third, a parallel comparison of the 52-week study and the first 52 weeks of the carcinogenicity study shows that the body weight gain decrement effect was of a similar order of magnitude in both studies. Fourth, the magnitude of decrease in body weight gain occurring during week interval 0 to 52 in the 104-week study does not worsen during the last half of the study. These observations add strength to the utility of the 52-week dietary rat study in resolving any concern about the body weight gain decrement effect and in establishing a NOEL of 30 mg/kg bw/d for this endpoint (Refs. 4 and 10).

f. *Clinical studies assessments—human tolerance to neotame.* The petitioner submitted the results of six human clinical trials that investigated the ingestion of neotame under varied conditions, including acute-single exposure, acute-repeat exposure, and short-term (2-week) and longer-term (13-week) daily exposure. Five of these trials employed healthy adult subjects, while one trial evaluated non-insulin dependent diabetes mellitus (Type II diabetic) adult subjects. In each of these trials, subject tolerance to neotame intake was determined by physical examinations, vital signs, electrocardiograms, routine clinical laboratory measurements (e.g., hematology, clinical chemistries, and urinalysis), and self-assessments of adverse experiences.

The levels of neotame administered in these clinical trials ranged from 1 to 15 times the 90th percentile EDI level of 0.1 mg/kg bw/d or 6 mg per person per day (mg/p/d).

The agency concludes that in all six trials there are no treatment-related effects reported for any of the parameters examined. Although headache was the most frequently noted adverse experience, the incidence of

headache is comparable for the treated and control groups and is not considered to be associated with neotame intake. Results from ancillary pharmacokinetic measurements in several of the clinical trials do not raise any safety concerns. In the trial with Type II diabetic subjects, no adverse effects are noted in any of the subjects. Under the conditions of that trial, the agency concludes that the ingestion of neotame at levels up to 1.5 mg/kg bw/d does not produce significant changes in either fasting-state glucose or insulin levels in Type II diabetic subjects.

Based on reviews of these clinical trials, the agency concludes that the ingestion of neotame at levels up to 1.5 mg/kg bw/d (15 times the 90th percentile EDI) for a period as long as 13 weeks is well tolerated by healthy male and female subjects. The agency also concludes that in the study with Type II diabetic subjects, the intake of neotame at levels up to 1.5 mg/kg bw/d does not have significant effects on fasting plasma glucose or insulin levels in study subjects (Refs. 4 and 13).

D. Estimating an Acceptable Daily Intake for Neotame

In determining an acceptable daily intake (ADI) for a new food additive, the agency relies on a comprehensive evaluation of all relevant studies and information submitted by the petitioner. As the agency's evaluation of the neotame safety studies database progressed, four studies with attendant issues emerged as having the greatest impact in reaching a safety decision; these studies are highlighted in table 1 of this document.

TABLE 1.—SUMMARY OF STUDY DATA PERTINENT TO ESTABLISHING AN ACCEPTABLE DAILY INTAKE VALUE FOR NEOTAME

Study Information	Pivotal Endpoint	NOEL (mg/kg bw/d)	Safety Factor[A]	ADI (mg/p/d)
2-Generation Reproduction (Rat)	Motor Activity and Cognitive Function in F1 Males	(300)[B]	1,000	18
52-week (Dog)	Serum (Hepatic) ALP Levels and Relative Liver Weights in Females	60	100	36
104-week (Mouse)	Body Weight Gain Decrement in Both Sexes	50	100	30
52-week (Rat)	Body Weight Gain Decrement in Females	30	100	18

[A] Safety factors typically applied by the agency in establishing an ADI based on effects from a reproductive toxicity study or from a chronic study are 1000 and 100, respectively.
[B] The value reported is the NOAEL as discussed in Section II.C.2.a of this document.

Based on the NOAEL or NOEL identified for the most sensitive endpoint in each of the four studies, ADI values were determined ranging from a high of 36 mg/p/d to a low of 18 mg/p/d. In taking a conservative approach, the agency concludes that the appropriate ADI for neotame is 18 mg/p/d (Ref. 4). This level is three times higher than the 90th percentile EDI for neotame of 6 mg/p/d.

III. Comments

Thirty comments were submitted to FDA's Dockets Management Branch in response to the filing of the two neotame food additive petitions (25 for FAP 8A4580 and 5 for FAP 9A4643). The issues raised in the comments are identified and grouped into the following subject categories.

Aspartame

The majority of the comments compared neotame to aspartame. In these comparisons, the comments assumed that neotame produces the same metabolic breakdown products as aspartame and thus would be responsible for the same health effects they allege to be associated with aspartame, which is the subject of a food additive regulation (21 CFR 172.804). In response to these comments, FDA points out that neotame is chemically and metabolically different (see section II.A of this document and Ref. 1, and section II.C.1 of this document, respectively) from aspartame even though they are structurally related. Therefore, the comments' assertions about neotame are without basis. Because the comments do not provide the agency with any information regarding the safety of neotame, they will not be discussed further.

Estimated Daily Intake

Several comments objected to the tabletop use petition on the basis that the petitioner's EDI for neotame is inaccurate, implying that it is too low. In determining an EDI, FDA makes projections based on the amount of the additive proposed for use in particular foods and on data regarding the consumption levels of these particular foods, commonly using the 90th percentile as a measure of high chronic exposure. The agency concludes that the 90th percentile EDI calculated for neotame, as discussed in section II.A of this document, accurately reflects the exposure to neotame as a general-purpose sweetener in all foods (except for meats and poultry), including tabletop use (Ref. 2).

One comment noted that the petitioner assumes that neotame will replace 50 percent of aspartame's current applications and argued that this assumption may be limited unduly and not sufficiently conservative. FDA agrees with the comment on this point, and disagrees with the petitioner's use of the 50 percent replacement factor in their estimation of exposure to neotame. The agency conservatively assumes that this new sweetener will replace all existing uses of aspartame (Ref. 14) and uses this estimate in its safety evaluation.

No Observed Effect Level, Body Weight, and Body Weight Gain Effects

One comment stated that there is no NOEL established by the 104-week rat carcinogenicity study for neotame, because all doses show adverse effects on growth. The comment also asserted that the data contained in this study do not support the petitioner's explanation that decreases in body weights in the treated rats are due to reduced palatability of the neotame-containing diets. In addition, the comment indicated that the petitioner did not supply any gavage, pair-feeding, or dietary restriction studies to prove that the body weight gain decrements are due to palatability and not toxicity. The comment also claimed that a safe usage level for neotame cannot be determined from the safety database provided in the neotame food additive petitions.

FDA agrees that a NOEL cannot be established based on the 104-week rat carcinogenicity study, in view of the body weight gain (decrement) effect. The agency also notes that, while neotame may have had some influence

on diet palatability, the decreases in food intake (adjusted for neotame content) among neotame-treated rats of both sexes in the 104-week study are too small to explain the magnitude of the body weight gain decrement that occurred in rats from the neotame treatment groups (see section II.C.2.d of this document and Refs. 4 and 10). FDA disagrees, however, about the necessity for additional testing requested by the comment to resolve the body weight gain decrement issue. While the proposed studies might address mechanistic relationships between food consumption and weight gain, the agency believes that they will not provide meaningful data to explain the magnitude of differences in body weight and body weight gain in neotame-treated rats from the 104-week study in view of the small decreases in food consumption noted in these animals. In addition, FDA believes that a safe usage level for neotame can be established from the database provided by the petitioner. As discussed in section II.C.2.e of this document, the results in the 52-week rat dietary toxicity study provide a strong scientific basis to resolve concerns over the body weight gain decrement effect (Refs. 4, 10, and 15). Based on the 52-week rat study and using body weight gain decrement as the most sensitive endpoint for toxicity, the agency is able to establish a NOEL for neotame of 30 mg/kg bw/d. From this NOEL, FDA derives an ADI for neotame of 18 mg/p/d (see table 1 in section II.D of this document and Ref. 4).

Serum Alkaline Phosphatase and Liver Toxicity

Several comments expressed concerns regarding potentially adverse effects of neotame based on changes observed in serum ALP levels in dogs consuming high doses of neotame (i.e., 200 mg/kg bw/d and higher) in both 13-week and 52-week feeding studies. Additional comments suggested that neotame is hepatotoxic, as evidenced by effects on other endpoints, such as changes in absolute and/or relative liver weight, changes in serum cholesterol and triglycerides, and neotame-related cholestasis.

The agency notes that most of these comments focused on effects observed in the 13-week dog study. In its review of the subchronic (13-week) dog study, the agency observed the liver effects referenced in the comments (Ref. 16). Ordinarily, in the absence of a longer duration study, the agency would have given more weight to the results of the 13-week dog study. However, a chronic (52-week) dog study was also submitted in support of the safety of neotame, and that study provides for a more complete manifestation of the target organ toxicity in neotame-treated dogs.

While the agency considers the 13-week dog study useful for obtaining preliminary toxicological information (i.e., identification of target organs) and for determining the appropriate range of doses of neotame that would be fed in the 52-week dog study, the 52-week study provides a stronger basis for assessing the potential chronic toxicity of neotame in the dog. Because the results from this longer-term study supersede those of the 13-week study and because all of the effects noted in the shorter-term study occurred at levels of exposure well above the NOEL established by the 52-week study, the agency concludes that no further discussion is needed in response to issues raised in comments concerning the 13-week dog study.

Several comments asserted that elevated serum ALP levels observed in the neotame-treated dogs in the 52-week dog study indicate liver toxicity. As discussed in section II.C.2.b of this document, FDA recognizes that in the 52-week dog study elevated serum ALP levels are observed in both sexes of dogs from as early as 13 weeks until the end of the study at neotame dose levels of 200 and 800 mg/kg bw/d. However, the agency disagrees with comments that these elevated serum ALP levels are evidence of hepatic toxicity. While an increase in serum ALP may be an indicator of liver toxicity, such a conclusion cannot be substantiated in the absence of additional corroborative changes. Specifically, hepatic damage may result in increased levels of other liver enzymes, such as alanine aminotransferase, aspartate aminotransferase, or gamma glutamyl transferase. None of these liver enzymes was elevated in the neotame-treated dogs. Also, a decrease in blood albumin levels may indicate chronic liver toxicity. Blood albumin levels in dogs from all neotame dose groups were normal and comparable to control values. Furthermore, an elevation in serum bilirubin indicates cholestasis; serum bilirubin levels were unaffected by neotame treatment.

Increased cholesterol levels are another indication of altered liver function. Plasma cholesterol and triglyceride levels in dogs from the 52-week study, although somewhat variable, were well within the normal range for dogs and unaffected by neotame treatment. Additionally, histopathological examinations of livers from dogs from the neotame-treated groups did not reveal any evidence of necrosis, blockage of bile flow, or any other abnormalities that were not detected in control animals. Collectively, these observations support the agency's conclusion that data from the 52-week study do not show evidence of hepatic toxicity in dogs administered neotame (Refs. 4, 17, and 18).

Several comments asserted that neotame-related liver toxicity is not reversible, as is implied by the petitioner, based primarily on the increases in both serum ALP levels and relative liver weights in the dog studies. The agency concludes that the reversibility of these effects is not relevant to a safety decision regarding chronic ingestion of neotame. While FDA agrees, as noted in section II.C.2.b of this document, that increases in serum ALP levels and relative liver weights occur in dogs from the 200 and 800 mg/kg bw/d neotame groups in the 52-week study, neither of these parameters is affected at the lower levels tested (20 or 60 mg/kg bw/d). By considering serum ALP and relative liver weights as the most sensitive endpoints of potential neotame toxicity, the agency determines for the 52-week dog study that 60 mg/kg bw/d is an appropriate NOEL (Refs. 4, 10, and 17).

Liver as a Target Organ for Neotame Toxicity

One comment emphasized the importance of the liver in animal growth and glucose homeostasis. This comment asserted, based on analyses of the neotame safety studies database, that neotame affects growth in both rats and dogs, and appears to affect glucose homeostasis in persons with diabetes. Based upon these findings, along with the elevated serum ALP levels in neotame-treated dogs and the structure of neotame, the comment concluded that it was important to rule out the liver as a target organ.

In regard to the effect of neotame on body weight gain in the rat, the agency has established a NOEL of 30 mg/kg bw/d, based on the 52-week rat feeding study, as summarized in section II.C.2.e of this document. We discuss our analyses of the 52-week rat feeding study and our resolution of the body weight gain effect in more detail in Refs. 10 and 15.

In regard to the effect of neotame on body weight and body weight gain in the 52-week dog feeding study, the effect occurred only in male dogs and only in the highest neotame dose group (i.e., 800 mg/kg bw/d) during weeks 1 to 5 and 7 to 8 (Ref. 18). At all other dose levels tested (i.e., 20, 60, and 200 mg/kg bw/d), there were no statistically significant effects on body weight or body weight gain in either sex. Furthermore, as discussed in

section II.C.2.b of this document, the agency relies on more sensitive endpoints, i.e., serum ALP levels and relative liver weights, for establishing a NOEL for neotame from the 52-week dog study.

The agency also disagrees with the comment's assertion that neotame appears to affect glucose homeostasis in persons with diabetes. We explain our basis for concluding that neotame does not appear to affect glucose homeostasis in persons with diabetes later in this document, in the discussion entitled ''Type II Diabetes Study.''

As for changes in serum ALP levels, the agency does not consider these to be a manifestation of hepatic toxicity in the 52-week dog study. Our reasons for discounting the toxicological significance of the changes in serum ALP are discussed previously (see section II.C.2.b of this document and the fourth subject category in section III ''Serum Alkaline Phosphatase and Liver Toxicity'').

The comment asserted that ''[t]he structure of neotame suggests that the metabolic formation of nitrosamines by gut microflora is possible as well as formation in some food products.'' The agency acknowledges that a number of nitrosamine compounds are potent hepatotoxins and hepatocarcinogens. The agency also recognizes that neotame contains a secondary amine that could hypothetically form nitrosoneotame in the presence of a nitrosating agent. However, there is no scientific evidence presented in this comment to demonstrate that the presence of neotame in food leads to the formation of nitrosoneotame either through chemical reaction in food products or by metabolic processes in the gut upon ingestion (Ref. 14). Furthermore, the petitioner addressed this issue using many maximizing assumptions concerning the formation and potency of the hypothetical nitrosoneotame. In particular, the petitioner assumed that nitrosoneotame would be formed and that it would be as potent a carcinogen as dimethylnitrosamine. Based on this scenario, the petitioner concluded that the amounts of nitrosamine that could be formed would be extremely small, that any hypothetical risk would be trivial, and that additional analyses were not necessary. After evaluating the petitioner's reasoning, FDA agrees with this conclusion (Refs. 1 and 14). Furthermore, as noted in sections II.C.2.c and II.C.2.d of this document, there is no evidence of chronic liver toxicity or pre-neoplastic or neoplastic liver lesions in lifetime carcinogenicity feeding studies in rats and mice ingesting neotame in amounts up to 1,000 mg/kg bw/d and 4,000 mg/kg bw/d, respectively. Thus, the agency concludes that the hypothetical formation of nitrosamine compounds from neotame poses no safety concerns.

Finally, the agency recognizes that one cannot absolutely rule out the liver as a target organ for the toxic effects of neotame when it is ingested at exaggerated dose levels. However, as discussed in the agency's response to this comment, and elsewhere in this document, the agency concludes that at expected levels of dietary intake of neotame there is no concern for potential toxic effects to the liver.

Systemic Exposure/Body Weight Gain

One comment stated that ''[t]he long-term studies conducted in the dog species show definite signs of toxicity which, through close inspection of the pharmacokinetic data generated in the study and specific PK metabolism studies, is shown to be related to systemic exposure of the parent compound.'' Subsequently, the comment referred to ''a non-linear increase in systemic exposure of the parent compound and its metabolite over the dose range studied.'' The comment asserted that this nonlinear increase in systemic exposure to the parent compound and its metabolite is related to decreases in body weight gain in the dog.

In response, the agency notes that the analysis of PK parameters (i.e., area under the curve, and maximum concentration) discussed in the comment is based on data from the 13-week dog study, which the agency does not consider to be a long-term study as claimed in the comment. In the agency's review of this study (Ref. 16), decreased body weight gains were observed in dogs of both sexes at dietary neotame intakes of 600 and 2,000 mg/kg bw/d (the 2,000 mg/kg bw/d dose level was reduced on day 15 to 1,200 mg/kg bw/d for the remainder of the 13-week study). These extremely high dose levels are 6,000 to 20,000 times greater than the 90th percentile EDI for neotame. At lower levels of neotame intake (i.e., 60 and 200 mg/kg bw/d), there were no effects on body weight gain in either sex. In considering the PK parameters derived from blood concentration data from the dogs fed these lower levels of neotame, the agency concludes (Ref. 19) that there was no evidence of increased systemic exposure to neotame or its metabolites. (It should be noted that PK measurements in the dog were evaluated only in the 13-week subchronic study.)

Moreover, as mentioned in Refs. 4, 10, and 17, a chronic (52-week) neotame dog feeding study was conducted. Because of its longer duration, the 52-week study is more definitive than the subchronic (13-week) dog study for assessing the toxicity of neotame. In the 52-week dog study, decreased body weight gains were noted only at the highest dose tested (800 mg/kg bw/d) and not at any of the lower dose levels (20, 60, and 200 mg/kg bw/d).

Bile Salt Metabolism and Excretion

One comment pointed out that neotame produced discolored feces (white and gray) at the highest doses tested (200 and 800 mg/kg bw/d) in the 52-week dog study. This comment suggested that the change in fecal color was due to neotame's effect on bile salt metabolism and excretion. The agency agrees that dogs from the 800 mg/kg bw/d treatment group frequently excreted gray or white feces. However, there were only two incidences of gray feces from animals in the 200 mg/kg bw/d treatment group (a female on day 322 and a male on day 328), and no changes in appearance of feces from dogs in the 20 or 60 mg/kg bw/d treatment groups. There was also one incident of white feces observed for a female in the control group on day 70 of the study. Based on this evidence, as well as information in section II.C.2.e of this document, the agency concludes that there is no evidence to support a correlation between fecal color and liver toxicity in dogs fed neotame-containing diets during the 52-week study (Ref. 20).

Developmental (Teratology) Studies

One comment claimed that the dose levels of neotame tested in the definitive rabbit developmental (teratology) study were too low. The agency disagrees. FDA's evaluation of this study shows that there are statistically significant decreases in feed consumption and maternal body weights during the gestation period. Thus, the highest dose in the study (500 mg/kg bw/d) was sufficient to achieve maternal toxicity (Refs. 4 and 6). In addition, FDA notes that this study satisfies dose selection criteria recommended in the agency's Redbook guidelines (Ref. 21).

Another comment raised concern over post-implantation effects of neotame based on a maternal toxicity range-finding study in the rabbit. Because of the study's limitations, the agency does not share this concern. While a range-finding study may aid in identifying a compound's potential target organ effects, the primary objective of such a study is to establish appropriate dose levels to be further evaluated in a more definitive toxicity study. In the study in question, the agency notes that only six animals were used in each dose group, too few for an adequate assessment of

the developmental (teratogenic) potential of a compound (Ref. 21). In the definitive rabbit developmental (teratology) study, a total of 25 mated females were assigned to the control and high-dose groups, and 20 each in the low- and mid-dose groups (Ref. 6). This larger number of animals allows for a more accurate assessment of the teratogenic potential of neotame in the rabbit as well as increasing the statistical power of the study. In the definitive rabbit teratology study, there were no significant dose-dependent, post-implantation effects due to neotame treatment.

One comment argued that neotame-induced effects on post-implantation loss, fetal size, and limb development in rabbits in the teratology study may be masked by the quality of the study and the high background incidence of these effects. The comment disagreed with the petitioner's interpretation of the data on post-implantation and other fetal observations. In particular, the comment asserted that the petitioner's interpretation of data was scientifically flawed because the petitioner made comparisons between treatment groups and the concurrent control group whose incidence percentages, according to the comment, were higher than those incidence percentages typically seen in historical control data.

FDA disagrees with this assessment. By using concurrent control animals, the study avoided the inherent variability that may be introduced into data analyses when historical control data are used in place of concurrent control data. Potential sources of variability from the use of historical control data include: (1) Differences in animal husbandry and animal room environment, (2) differences in diet compositions, (3) differences in times of study conduct, (4) differences in the sources of nutrients in animal diets, (5) differences in skills and experience of technicians or scientists, and (6) genetic drifts, as discussed in Haseman et al., 1989[3] and Roe, 1994.[4] Therefore, the agency concludes that, within the definitive rabbit study, in the absence of compelling evidence to the contrary, it is more appropriate to compare results between treated and concurrent control animals than to compare results between treated animals and historical control data. The agency also notes that the study followed the Redbook guidelines. Additionally, the agency finds no dose-dependent effects on post-implantation data when this study's treated and concurrent control groups are compared (Refs. 6 and 21).

In further response to this comment, the agency concludes that the manner in which the comment has analyzed the data from the rabbit developmental study is incorrect. More specifically, the comment compared control and treated groups on a per-fetus, rather than on a per-litter incidence basis. As recognized by authoritative sources[5 6 7] the maternal animal, not the developing organism, is randomly and independently assigned to control and treatment groups during the gestation period. Therefore, the analyses of effects should be reported as incidence-per-litter or as number and percent of litters with particular endpoints. Because the comment's analysis is based on inappropriate per-fetus comparisons, its conclusions are inherently flawed. Furthermore, the agency finds that the comparisons between the concurrent control and treated groups, on a percent per-litter basis, show no treatment-related effects on the litter incidence of any fetal endpoint examined in the rabbit developmental (teratology) study (Refs. 6 and 21).

One comment focused on the dosimetric and pharmacokinetic aspects of the rabbit developmental (teratology) study. The comment asserted that if a higher dose level, e.g., 1,000 mg/kg bw/d, rather than 500 mg/kg bw/d, had been used as the top dose in this definitive study, higher systemic exposure and greater toxicity would have occurred in the neotame-treated rabbits. As noted earlier with regard to the levels of neotame tested in this study, the agency finds that overall study design and dose selection were sufficient to achieve maternal toxicity. FDA believes that it is irrelevant if greater toxicity were to occur at a higher dose level than the highest dose used in the rabbit developmental (teratology) study. The highest dose used was sufficient to achieve maternal toxicity, based on statistically significant decreases in both feed intake and body weight gain, at the 500 mg/kg bw/d dose level. Furthermore, there is an appropriate NOEL for these effects (Refs. 6 and 21).

This comment also suggested that decreases in food intake and maternal body weight gain noted in the dams from the 500 mg/kg bw/d dose group were due to (tissue) accumulation of neotame. Based on a review of the PK data from the definitive rabbit developmental study, the agency concludes that these data do not suggest that bioaccumulation of neotame or its metabolites would occur even at a dose level of 500 mg/kg bw/d (Ref. 22). With regard to a possible relationship between (tissue) accumulation of neotame and decreases in feed intake and maternal body weight gain, the agency finds that a mechanistic explanation is unnecessary for an adequate evaluation of the study because the agency has determined an appropriate NOEL for these effects. As noted previously in section II.C.1.b of this document, based on the evaluation of other neotame feeding studies in the rat and dog, FDA concludes that there is no concern for the potential bioaccumulation of neotame or its metabolites at expected human intake levels.

Type II Diabetes Study

One comment criticized several aspects of the Type II diabetes study. The comment stated that the design of this study was not adequate to detect small differences resulting from neotame treatment in the parameters examined. It cited the following inadequacies: Limited statistical power, parameters measured only under the quiescent metabolic condition of extended fasting, short duration, and no meal test. Despite these deficiencies, the comment recommended inclusion of the Type II diabetes study in the safety evaluation, because no other studies in the neotame safety database investigated the effects of neotame on glucose homeostasis in patients or animals with diabetes. Finally, the comment concluded that results from the Type II diabetes study were strongly suggestive of a treatment-related effect of neotame on fasting glucose control.

FDA agrees that although the experimental design of the Type II diabetes study limits its utility for assessing the potential effects of neotame on glucose homeostasis in Type II diabetics, it should be included in the safety evaluation of neotame (Ref. 23). Based on findings obtained during a directed clinical investigator site inspection and audit of study records at the facility responsible for this clinical

[3] Haseman, J. K., Huff, J. E., Rao, G. N., and Eustis, S. I., ''Sources of Variability in Rodent Carcinogencity,'' *Fundamental and Applied Toxicology*, vol. 12(4), pp. 793–804, 1989.

[4] Roe, F. J. C., ''Historical Histopathological Control Data for Laboratory Rodents: Valuable Treasure or Worthless Trash?''*Laboratory Animals,* vol. 28(2), pp. 148–154, (London), 1994.

[5] FDA, ''Guidelines for Developmental Toxicity Studies,'' chapter IV.C.b, section III.D, *Redbook 2000 Toxicology Principles for the Safety of Food Ingredients* (http://www.cfsan.fda.gov/~redbook/redivc96.html).

[6] Tyl, R. W. and M. C. Merr, ''Developmental Toxicity Testing-Methodology,'' chapter 7, pp. 217, *Handbook of Developmental Toxicology*, edited by R. D. Hood, CRC Press, New York, NY, 1997.

[7] Kimmel, C. A. and G. I. Kimmel, ''Principles of Developmental Toxicity Risk Assessment,'' chapter 21, pp. 671–672, *Handbook of Developmental Toxicology*, edited by R. D. Hood, CRC Press, New York, NY, 1997.

trial, FDA concludes that the study was well-executed, irrespective of previously noted design limitations (Ref. 23).

The agency disagrees with the comment's conclusion that results from the trial with Type II diabetic subjects are strongly suggestive of a treatment-related effect of neotame on glucose control. FDA performed a detailed evaluation of the study data on fasting glucose pharmacodynamic parameters including: (1) Area under the effect curve, (2) area under curve, (3) percent perturbation, and (4) normal variations in glucose concentrations. Based on these analyses, the agency finds that under the conditions of the study, there were no significant changes in these parameters in study subjects that are attributable to neotame (Ref. 23). Overall, FDA concludes that under the conditions of the Type II diabetic study, blood glucose concentrations in Type II diabetic subjects following neotame treatment (at levels ranging from 5 to 15 times the 90th percentile EDI of 0.1 mg/kg bw/d) are comparable to those in the same subjects when given a placebo, and that any changes noted are within the normal range of variation and not the result of neotame treatment (Ref. 23).

Methanol and Phenylalanine Formation

Several comments expressed concern that harmful levels of methanol and phenylalanine may result from ingesting neotame-containing foods and beverages. FDA disagrees with these comments. Methanol release results from the de-esterification of neotame, which occurs more rapidly in the rat and rabbit than in the dog and human (see section II.C.1.d of this document). The agency concludes that, at the 90th percentile EDI of neotame, the resultant exposure to methanol would be extremely low, approximately 0.008 mg/kg bw/d (Ref. 5). Humans are exposed to much higher levels of methanol intake from their daily diet. For example, the methanol content of fruit juices ranges from 64 mg/liter (L) in orange juice to 326 mg/L in apricot juice. In contrast, the methanol content of neotame-sweetened carbonated beverages is estimated to be 1.37 mg/L.

Similarly, FDA concludes that the potential intake of phenylalanine from the use of neotame will be extremely low in comparison to that present in the daily diet. Based upon data cited by Koch and Wenz, 1984 (see footnote 2 in section II.C.1.d of this document), the agency notes that the daily dietary intake of phenylalanine for a healthy individual may range from 2.5 to 10 g/p/d. The daily intake of phenylalanine for a PKU homozygous child with a body weight of 20 kg is reported to range from 0.4 to 0.6 g/p/d or 400 to 600 mg/p/d (Ref. 5).

Using a conservative approach (Refs. 4 and 5), the agency calculates that the amount of phenylalanine exposure expected from the 90th percentile intake (0.1 mg/kg bw/d) of neotame (Ref. 2) by a 60 kg adult is 2.64 mg/p/d. FDA finds this amount of exposure trivial in contrast to that expected from the normal adult diet. For the PKU homozygous child, the additional phenylalanine intake expected from the 90th percentile ingestion of neotame (i.e., 0.17 mg/kg bw/d) (Ref. 3) by a 20 kg individual is 1.50 mg/p/d, an incremental amount that is equivalent to no more than 0.3 to 0.4 percent of the PKU homozygous child's normal daily phenylalanine intake. From these conservative estimates, the agency concludes that the potential intake of phenylalanine that may result from use of neotame as a general-purpose sweetener does not pose any safety concern (Refs. 4 and 5).

IV. Conclusion

The agency has evaluated all the data and other information submitted by the petitioner in support of the safe use of neotame as a general-purpose sweetener and concludes that there is a reasonable certainty that no harm will result from the use of neotame as proposed. In accordance with a memorandum of understanding (MOU) between the Food Safety and Inspection Service (FSIS), United States Department of Agriculture, and FDA (65 FR 51758, August 25, 2000), a restriction from use ''in meat and poultry'' appears in the neotame regulation. This restriction is required when the petitioner does not specify whether the food additive is intended for such use. At this time, FSIS has not made a determination on the use of neotame in or on meat or poultry. Therefore, FDA concludes that the food additive regulations should be amended as set forth in this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petitions and the documents that FDA considered and relied upon in reaching its decision to approve the petitions are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Effects

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

VI. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**), and you may review them between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from DiNovi, Division of Product Manufacture and Use, Chemistry Review Team, to Anderson, Division of Product Policy, March 31, 1998.

2. Memorandum from DiNovi, Division of Product Manufacture and Use, Chemistry Review Team, to Anderson, Division of Product Policy, August 12, 1999; addendum memorandum to the August 12, 1999, memorandum from DiNovi, Division of Biotechnology and GRAS Notification Review, to Anderson, Division of Petition Review, February 28, 2002.

3. Memorandum from DiNovi, Division of Product Manufacture and Use, Chemistry Review Team, to Anderson, Division of Product Policy, December 14, 2000.

4. Memorandum from Biddle, Lin, Whiteside, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, January 31, 2001; addendum memorandum to the January 31, 2001, memorandum from Whiteside, Division of Petition Review, to Anderson, Division of Petition Review, February 28, 2002.

5. Memorandum from Bleiberg, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, January 31, 2001; addendum memorandum to the January 31, 2001, memorandum from Biddle, Division of Petition Review, to Anderson, Division of Petition Review, February 28, 2002.

6. Memorandum from Welsh, Scientific Support Branch, to Anderson, Division of Product Policy, January 31, 2001.

7. Memorandum from Mattia, Scientific Support Branch, to Anderson, Division of Product Policy, January 31, 2001; addendum memorandum to the January 31, 2001, memorandum from Biddle, Division of Petition Review, to Anderson, Division of Petition Review, April 12, 2002.

8. Position paper from The NutraSweet Co., ''Neotame Does Not Cause Any Behavioral or Neurotoxic Effects.''

9. Position paper from The NutraSweet Co., ''Increases in Serum Alkaline Phosphatase in

the Dog Are Not Associated With Target Organ Toxicity.''

10. Memorandum from Whiteside, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, January 21, 2001.

11. Memorandum of Conference from the Center for Food Safety and Applied Nutrition—Cancer Assessment Committee, August 16, 2000.

12. Position paper from The NutraSweet Co., '' In the Mouse Carcinogenicity Study with Neotame Small Changes in Body Weight Gain at Some Intervals in Female Mice at 50 mg/kg bw Relative to Controls are Due to a Decrease in Food Consumption.''

13. Memorandum from Chen, Scientific Support Branch, to Anderson, Division of Product Policy, July 19, 2000.

14. Memorandum from DiNovi, Division of Product Manufacture and Use, Chemistry Review Team, to Anderson, Division of Product Policy, January 10, 2001.

15. Memorandum from Whiteside, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, January 31, 2001.

16. Memorandum from Ikeda, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, May 28, 1999.

17. Memorandum from Ikeda, Division of Health Effects Evaluation, to Biddle, Division of Health Effects Evaluation, January 31, 2001.

18. Memorandum from Ikeda, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, June 16, 2000; addendum memorandum to the June 16, 2000, memorandum from Whiteside, Division of Petition Review, to Anderson, Division of Petition Review, February 28, 2002.

19. Memorandum from Bleiberg, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, February 5, 2001.

20. Memorandum from Ikeda, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, February 5, 2001.

21. Memorandum from Shackleford, Division of Heath Effects Evaluation, to Anderson, Division of Product Policy, February 12, 2001.

22. Memorandum from Roth, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, February 28, 2001.

23. Memorandum from Park, Roth, and Klontz, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, January 30, 2001.

VIII. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (see **ADDRESSES**) written objections by August 8, 2002. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

2. Section 172.829 is added to subpart I to read as follows:

§ 172.829 Neotame.

(a) Neotame is the chemical *N*-[*N*-(3,3-dimethylbutyl)-L-α-aspartyl]-L-phenylalanine-1-methyl ester (CAS Reg. No. 165450–17–9).

(b) Neotame meets the following specifications when it is tested according to the methods described or referenced in the document entitled ''Specifications and Analytical Methods for Neotame'' dated April 3, 2001, by the NutraSweet Co., 699 North Wheeling Rd., Mount Prospect, IL 60056. The Director of the Office of the Federal Register has approved the incorporation by reference of this material in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740. Copies may be examined at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., rm. 1C–100, College Park, MD 20740, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC 20001.

(1) Assay for neotame, not less than 97.0 percent and not more than 102.0 percent on a dry basis.

(2) Free dipeptide acid (*N*-[*N*-(3,3-dimethylbutyl)-L-α-aspartyl]-L-phenylalanine), not more than 1.5 percent.

(3) Other related substances, not more than 2.0 percent.

(4) Lead, not more than 2.0 milligrams per kilogram.

(5) Water, not more than 5.0 percent.

(6) Residue on ignition, not more than 0.2 percent

(7) Specific rotation, determined at 20 °C $[\alpha]_D$: -40.0° to 43.4° calculated on a dry basis.

(c) The food additive neotame may be safely used as a sweetening agent and flavor enhancer in foods generally, except in meat and poultry, in accordance with current good manufacturing practice, in an amount not to exceed that reasonably required to accomplish the intended technical effect, in foods for which standards of identity established under section 401 of the Federal Food, Drug, and Cosmetic Act do not preclude such use.

(d) When neotame is used as a sugar substitute tablet, L-leucine may be used as a lubricant in the manufacture of tablets at a level not to exceed 3.5 percent of the weight of the tablet.

(e) If the food containing the additive purports to be or is represented to be for special dietary use, it shall be labeled in compliance with part 105 of this chapter.

Dated: July 2, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–17202 Filed 7–5–02; 10:41 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8997]

RIN 1545–BA76

Carryback of Consolidated Net Operating Losses To Separate Return Years; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains corrections to temporary regulations

that were published in the **Federal Register** on Friday, May 31, 2002 (67 FR 38000) that affect corporations filing consolidated returns.

DATES: This correction is effective May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Marie Milnes-Vasquez, (202) 622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections are under sections 1502 and 172 of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (TD 8997), that were the subject of FR Doc. 02–13576, is corrected as follows:

1. On page 38001, column 3, in the preamble under the paragraph heading ''Background'', third full paragraph, line 5, the language ''elections are made on a year-by-basis.'' is corrected to read ''elections are made on a year-by-year basis.''.

2. On page 38002, column 1, in the preamble under the paragraph heading ''Special Analyses'', first paragraph, lines 22 and 23, the language ''to 5 USC 553(b)(B) and delayed effective date is not required pursuant to 5 USC'' is corrected to read ''to 5 U.S.C. 553(b)(3)(B) and delayed effective date is not required pursuant to 5 U.S.C.''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–17019 Filed 7–8–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA28

TRICARE; Revisions to Coverage Criteria for Transplants, Cardiac and Pulmonary Rehabilitation and Ambulance Services

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule; administrative correction.

SUMMARY: The Department of Defense published a final rule in the **Federal Register** of Tuesday, June 25, 2002 (67 FR 42717) on Revisions to Coverage Criteria for Transplants, Cardiac and Pulmonary Rehabilitation and Ambulance Services. This document makes an administrative correction to that document.

DATES: This final rule is effective July 25, 2002, except § 199.4(e)(21) is effective August 12, 2002.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Marty Maxey, Medical Benefits and Reimbursement Systems, (TMA) telephone (303) 676–3627.

SUPPLEMENTARY INFORMATION: An interim final rule on Sub-Acute Care Program; Uniform Skilled Nursing Facility Benefit; Home Health Care Benefit; Adopting Medicare Payment Methods for Skilled Nursing Facilities and Home Health Care Providers was published on Thursday, June 13, 2002 (67 FR 40597) added a new § 199.4(e)(21) on home health services. A final rule on Revisions to Coverage Criteria for Transplants, Cardiac and Pulmonary Rehabilitation and Ambulance Services was published on June 25, 2002 (67 FR 42717) also added a new § 199.4(e)(21) on Pulmonary rehabilitation. This document corrects the paragraph designation.

In FR Doc 02–15913 published on June 25, 2002 (67 FR 41721) make the following correction: On page 41721, in the second column, redesignate paragraph (e)(21) as paragraph (e)(22).

Dated: June 27, 2002.

L.M. Bynum,

Alternate Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–17035 Filed 7–8–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–02–013]

RIN 2115–AE46

Special Local Regulations; Deerfield Beach Super Boat Race, Deerfield Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the Deerfield Beach Super Boat Race. This event will be held from 10 a.m. to 4 p.m. on July 14, 2002. This rule is necessary to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 10 a.m. on July 14, 2002 until 4 p.m. on July 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in the preamble as being available in the docket are part of docket CGD07–02–013 and are available for inspection or copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, FL, between the hours of 7:30 a.m. and 3 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BMC V. Sorensen, Coast Guard Group Miami, FL at (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public because there will be numerous spectator craft in the area.

For the same reason, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

On May 7, 1998, the Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** (63 FR 25187), seeking comments on the establishment of permanent special local regulations for the Deerfield Beach Super Boat Race. No comments were received during the comment period. On June 26, 1998, the Coast Guard published a final rule in the **Federal Register** (63 FR 34813) creating the permanent special local regulations in 33 CFR 100.733. The published rule is effective on the third Sunday in July.

However, this year the third Sunday in July will put the race the weekend before the mini-lobster season. The race organizers are moving the race date up one week this year to avoid conflict with vessels and people preparing for the mini-lobster season.

Background and Purpose

Super Boat International Productions Inc., is sponsoring a high-speed power boat race that will take place on July 14, 2002 in the Alantic Ocean off Deerfield Beach, Florida. Approximately 35 race boats, ranging in length from 24 to 50 feet, will participate in the event. There will also be approximately 200 spectator craft. The race boats will be competing at high speeds with numerous spectator craft in the area, creating a hazard in the navigable waterways. These regulations will create a regulated area offshore of Deerfield Beach that will only allow participant vessels to enter and establish a spectator craft area.

The permanent special local regulations in 33 CFR § 100.733 have been in place since 1998. The rule is effective on the third Sunday in July. However, this year the third Sunday in July will put the race the weekend before the mini-lobster season. The race organizers are moving the race date this year to avoid conflict with vessels and people preparing for the mini-lobster season.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, l979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of Department of Transportation is unnecessary because vessels will be able to transit around the regulated area and entry into the regulated area is prohibited for only 6 hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because small entities will be able to transit around the regulated area and entry into the regulated area is prohibited for only 6 hours on the day of the event.

A regulated area encompasses all waters within a box established by joining the following points:

Corner point 1: 26°19.7′N–080°04.4′W
Corner point 2: 26°19.7′N–080°03.7′W
Corner point 3: 26°15.7′N–080°04.1′W
Corner point 4: 26°15.7′N–080°04.9′W

A spectator area is established in the vicinity of the regulated area for spectator traffic and encompasses all waters within a box established by joining the following points:

Corner point 1: 26°15.7′N–080°03.9′W
Corner point 2: 26°15.7′N–080°04.1′W
Corner point 3: 26°19.7′N–080°03.7′W
Corner point 4: 26°19.7′N–080°03.5′W

All coordinates reference Datum NAD: 83.

Entry into the regulated area by non-participant persons or vessel is prohibited unless authorized by the Coast Guard Patrol Commander. After the completion of scheduled races and the departure of participants from the regulated area, traffic may resume normal operations at the discretion of the Coast Guard Patrol Commander. The Coast Guard Patrol Commander may also permit traffic to resume normal operations between scheduled racing events.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(h), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100–MARINE EVENTS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. From 10 a.m. on July 14, 2002 until 4 p.m. on July 15, 2002, add temporary § 100.35T–07–013 to read as follows:

§ 100.35T–07–013 Annual Deerfield Beach Super Boat Race; Deerfield Beach, Florida.

(a) *Regulated area.* (1) A regulated area encompasses all waters within a box established by joining the following points:

Corner point 1: 26°19.7′N–080°04.4′W
Corner point 2: 26°19.7′N–080°03.7′W
Corner point 3: 26°15.7′N–080°04.1′W
Corner point 4: 26°15.7′N–080°04.9′W

(2) A spectator area is established in the vicinity of the regulated area for spectator traffic and encompasses all waters within a box established by joining the following points:

Corner point 1: 26°15.7′N–080°03.9′W
Corner point 2: 26°15.7′N–080°04.1′W
Corner point 3: 26°19.7′N–080°03.7′W
Corner point 4: 26°19.7′N–080°03.5′W

All coordinates reference Datum NAD: 83.

(b) *Special local regulations.* (1) Entry into the regulated area by non-participant persons and vessels is prohibited unless authorized by the Coast Guard Patrol Commander. After the completion of scheduled races and the departure of participants from the regulated area, traffic may resume normal operations at the discretion of the Coast Guard Patrol Commander. The Coast Guard Patrol Commander may also permit traffic to resume normal operations between scheduled racing events.

(c) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Coast Guard Group Miami.

(d) *Dates.* This rule will be enforced from 10 a.m. to 4 p.m. on July 14, 2002. If the event is postponed on July 14, it will be enforced from 10 a.m. to 4 p.m. on July 15, 2002.

Dated: June 27, 2002.

J. W. Stark,

Captain, Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 02–17096 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 02–010]

RIN 2115–AA97

Safety Zone; Ammunition Island, Port Valdez, AK

AGENCY: Coast Guard, DOT.

ACTION: Correcting amendments.

SUMMARY: The Coast Guard is correcting the coordinates in a final rule for a safety zone encompassing Ammunition Island in Port Valdez, Alaska, that was published in the **Federal Register** on August 17, 1987 and amended on June 30, 1998. We are making this correction because of an incorrect position that was attributed to Ammunition Island and published in the final rule. This correction changes the coordinates of Ammunition Island to latitude 61°07′28″ N, longitude 146°18′29″ W.

DATES: Effective on June 21, 2002.

ADDRESSES: The public docket for this rulemaking is maintained by Coast Guard Marine Safety Office Valdez, P.O. Box 486, Valdez, Alaska 99686. Materials in the public docket are available for inspection or copying at Coast Guard Marine Safety Office Valdez. Normal office hours are 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Milo Ortiz, U.S. Coast Guard Marine Safety Office Valdez, Alaska, at (907) 835–7205.

SUPPLEMENTARY INFORMATION:

Background

The Coast Guard published a final rule in the **Federal Register** on August 17, 1987, (52 FR 30671) establishing a safety zone for the waters within 1330 yards of Ammunition Island, latitude 61°07′5″ N, longitude 146°18′ W, (NAD 83) and the vessel moored or anchored at Ammunition Island, Port Valdez, Alaska (33 CFR 165.1703). The zone is needed to protect the safety of persons and vessels operating in the vicinity during ammunition and explosives loading and offloading operations.

Need for Correction

It was recently discovered that the listed position for Ammunition Island was incorrect. The Coast Guard is correcting the listed position for Ammunition Island to latitude 61°07′28″ N, 146°18′29″ W (NAD 83).

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Accordingly, 33 CFR part 165 is corrected to make the following correcting amendments:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. In § 165.1703 revise paragraph (a) to read as follows:

§ 165.1703 Ammunition Island, Port Valdez, Alaska.

(a) *Location.* The waters within the following boundaries is a safety zone—the area within a radius of 1330 yards of Ammunition Island, centered on latitude 61°07′28″ N, longitude 146°18′29″ W, (NAD 83) and the vessel moored or anchored at Ammunition Island.

* * * * *

Dated: June 21, 2002.

P.M. Coleman,

Commander, Coast Guard, Captain of the Port Prince William Sound, Alaska.

[FR Doc. 02–17099 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[SW H–FRL–7241–8]

RIN 2050–AE88

Correction of Typographical Errors and Removal of Obsolete Language in Regulations on Reportable Quantities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA or ''the Agency'') is correcting errors and removing obsolete or redundant language in regulations regarding notification requirements for releases of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Consistent with ongoing regulatory reinvention initiatives within the Agency, EPA has reviewed the CERCLA release reporting regulations and has identified several categories of errors, including: typographical errors in the table of CERCLA hazardous substances; definitions made legally obsolete because of changes in CERCLA's statutory provisions; and redundant or unnecessary information.

DATES: This rule is effective on September 9, 2002, unless EPA receives written adverse comments by August 8, 2002. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: *Comments:* Interested parties may submit an original and two copies of comments referencing docket number 102RQ–CORRECT to (1) if using regular U.S. Postal Service mail: Docket Coordinator, Superfund Docket Office, (Mail Code 5201G), U.S. Environmental Protection Agency Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or (2) if using special delivery such as overnight express service: Superfund Docket Office, Crystal Gateway One, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

Release Notification: The toll-free telephone number of the National Response Center is 800/424–8802; in the Washington, DC metropolitan area, the number is 202/267–2675. The facsimile number for the National Response Center is 202/267–2165 and the telex number is 892427.

Docket: You may inspect copies of materials relevant to this rulemaking at the U.S. EPA Superfund Docket Office, located at Crystal Gateway One, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202 [Docket Number 102RQ–CORRECT]. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, we recommend that you make an appointment by calling 703/603–9232. You may copy a maximum of 100 pages from any regulatory docket at no cost. Additional copies cost $0.15 per page. The Docket Office will mail copies of materials to you if you are located outside the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA, Superfund, and EPCRA Hotline at 800/424–9346 (in the Washington, DC metropolitan area, contact 703/412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800/553–7672 (in the Washington, DC metropolitan area, contact 703/412–3323). For information on specific aspects of the rule, contact Lynn Beasley of the Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Ms. Beasley's e-mail address is *beasley.lynn@epa.gov* and her telephone number is 703/603–9086.

SUPPLEMENTARY INFORMATION: *Outline of This Document:* The contents of this preamble are listed in the following outline:

I. Introduction

A. *Who Potentially Will Be Affected by This Final Rule?*

This final rule may affect the following entities: (1) Persons in charge of vessels or facilities that may release CERCLA hazardous substances into the environment; and (2) entities that plan for or respond to such releases.

POTENTIALLY AFFECTED ENTITIES

Type of entity	Examples of affected entities
Industry	Manufacturers, handlers, transporters, and other users of CERCLA hazardous substances.
State, Local, or Tribal Governments	State Emergency Response Commissions, and Local Emergency Planning Committees.
Federal Government	National Response Center, and any Federal agency that may release or respond to releases of these substances.

EPA does not intend for this table to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other entities not listed in the table may also be affected. You can determine whether your organization is affected by examining the changes being made to 40 CFR part 302. If you have questions about the applicability of this action to a particular entity, consult the contact names and phone numbers listed in the

preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. What Are the Reporting Requirements Under CERCLA and EPCRA?

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, as amended, gives the Federal government broad authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. The term ''hazardous substance'' is defined in section 101(14) of CERCLA by reference to various Federal environmental statutes.

Under CERCLA section 103(a), the person in charge of a vessel or facility from which a CERCLA hazardous substance has been released in a quantity that equals or exceeds its reportable quantity (RQ) must immediately notify the National Response Center (NRC) of the release. A release is reportable if an RQ or more is released within a 24-hour period (see 40 CFR 302.6). In addition to the reporting requirements under CERCLA section 103, section 304 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 *et seq.*, requires owners or operators of certain facilities to report releases of extremely hazardous substances and CERCLA hazardous substances to State and local authorities (see 40 CFR 355.40). After the release of a hazardous substance in a quantity equal to or greater than its RQ, facility owners or operators must immediately notify the community emergency coordinator for each local emergency planning committee for any area likely to be affected by the release, and the State emergency response commission of any State likely to be affected by the release.

Section 102(b) of CERCLA establishes RQs of one pound (''statutory RQs'') for releases of most CERCLA hazardous substances. Under section 102(a) of CERCLA, the Administrator of EPA has the authority to adjust these RQs by regulation (''adjusted RQs''). The list of CERCLA hazardous substances and RQs is codified in Table 302.4 of 40 CFR 302.4.

C. What Is the Purpose of This Rule?

EPA and other Federal agencies periodically review the regulations they administer to identify those rules that are obsolete or unduly burdensome. For example, on June 29, 1995, EPA published a final rule (60 FR 33912) eliminating a number of legally obsolete regulations. Now we are taking another step in the ongoing review of our rules. EPA has reviewed 40 CFR part 302 and is correcting typographical errors in the table of hazardous substances. We also are revising regulatory text to make it more concise, conform more closely to statutory language, and eliminate text that is redundant or legally obsolete. All of these changes are editorial and do not affect any substantive aspects of the CERCLA release reporting program.

Because these corrections are editorial, EPA does not anticipate that any costs will be associated with this rulemaking. Rather, we expect that these corrections will serve to reduce confusion among the regulated community and government authorities about release reporting regulations contained in 40 CFR part 302 and, therefore, reduce the burden of complying with these regulations.

D. Why Is EPA Making These Changes in a Final Rule, Without Prior Opportunity for Comment?

EPA is publishing this rule without prior proposal because we view these changes as noncontroversial amendments and anticipate no adverse comment. Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure is impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because the removals and revisions contained in this final rule are editorial and do not affect any substantive aspects of the CERCLA release reporting program. Thus, notice and public comment procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B). For the same reason, EPA has also determined that it has good cause under 5 U.S.C. 553(d) to make the rule effective upon publication.

II. Corrections and Other Changes Made to 40 CFR Part 302 in Today's Rulemaking

The following section describes the specific corrections that EPA is making to 40 CFR part 302 in today's rulemaking.

A. Revisions to 40 CFR 302.2 (Abbreviations)

EPA believes that listing abbreviations in 40 CFR 302.2 is unnecessary, because these terms: (1) Are defined elsewhere in 40 CFR part 302 (as is the case with ''CASRN'' and ''kg''); (2) are not used in this CFR part (as in the case of ''lb'' for pound); or (3) would more appropriately be defined when the term is first used (such as ''RQ'' and ''RCRA''). For these reasons, EPA is removing and reserving 40 CFR 302.2.

B. Revisions to 40 CFR 302.3 (Definitions)

The definition of ''release'' in 40 CFR 302.3 was, at the time we codified it in the CFR in 1985, the same as the statutory definition of this term in CERCLA section 101(22). The Superfund Amendments and Reauthorization Act of 1986 (SARA), however, changed the statutory definition; for this reason, we are revising the definition of ''release'' in 40 CFR 302.3 to reflect these amendments, which included language regarding abandonment or discarding of containers. EPA proposed this change in a July 19, 1988, proposed rule (53 FR 27268) and did not receive any adverse comments on this issue.

In addition, the definition of ''reportable quantity'' in 40 CFR 302.3 is being changed to add the abbreviation ''(RQ)'' so that the term is defined when first used in 40 CFR part 302.

C. Revisions to 40 CFR 302.5 (Determination of Reportable Quantities)

Section 302.5(b) refers to toxicity identified in the Resource Conservation and Recovery Act (RCRA) regulations at 40 CFR 261.24. In 1990, EPA revised 40 CFR 261.24 as well as Table 302.4 to delete references to the terms ''extraction procedure'' and ''EP'' toxicity. To be consistent with these changes, EPA is revising paragraph (b) of 40 CFR 302.5 to delete references to ''EP'' toxicity.

D. Revisions to 40 CFR 302.6 (Notification Requirements)

An additional Washington phone number ((202) 267–2675), a facsimile number ((202) 267–2165), and a telex number (892427) are being added to the list of National Response Center (NRC) phone numbers in paragraph (a) of 40 CFR 302.6.

E. Revisions to 40 CFR 302.7 (Penalties)

The penalty description in 40 CFR 302.7(a)(3) was, at the time we codified it in the CFR in 1985, consistent with the penalty provisions in CERCLA section 103(b). In 1986, however, SARA changed CERCLA section 103(b) to include language regarding submission of false information. EPA proposed this change in the July 19, 1988 proposed rule and did not receive any adverse comments on this issue. Thus, EPA is revising paragraph (a)(3) of 40 CFR

302.7 to conform to the revised language of CERCLA section 103(b).

F. Revisions to 40 CFR 302.8 (Continuous Releases)

The reference to paragraph (a) in 40 CFR 302.8(e)(1)(iv)(H) and 40 CFR 302.8(f)(4)(viii) is incorrect, and is being changed to reference paragraph (b).

G. Revisions to 40 CFR 302.4 (Designation of Hazardous Substances)

Because corrections and other changes to Table 302.4 that are described below are numerous and pervasive, we are reprinting Table 302.4 in its entirety in today's rule. We hope that this reprint of Table 302.4 will prove to be a useful resource for the public and the regulated community until such time as the revised volume of 40 CFR part 302 that contains these changes is published. Amendatory instruction 5 in today's direct final rule accounts for the removal of the previous version of Table 302.4, and its replacement with the version published in today's final rule.

1. Formatting Changes to Table 302.4

Three columns in Table 302.4 of 40 CFR 302.4 contain information that is duplicated elsewhere in the table or is no longer relevant to the listing of hazardous substances and reportable quantities. For this reason, EPA is deleting these columns from Table 302.4 in today's rulemaking.

We believe that deleting these columns will serve to: (1) Simplify the table and reduce confusion among the regulated community and government authorities about its use; (2) reduce the number of typographical and other errors that are introduced into the table; and (3) allow the table to be printed in a ''portrait'' rather than ''landscape'' format, resulting in a reduction in the number of CFR pages. A description of each of the columns identified for deletion is included below.

a. Regulatory Synonyms Column

EPA lists substances in Table 302.4 by the names used in certain other environmental statutes (e.g., RCRA, the CWA, or the Clean Air Act (CAA)) or in their implementing regulations. When the substance is known by different names in different regulatory programs, EPA lists these names as separate entries in Table 302.4's Hazardous Substance column. In addition, Appendix A to Table 302.4 lists these synonyms together, by Chemical Abstracts Service Registry Number (CASRN).

Because the synonyms are all listed alphabetically in the Hazardous Substance column, and because Appendix A provides a per-substance grouping of all these synonyms, the Regulatory Synonyms column includes only unnecessary duplicative information. Therefore, EPA is deleting this column from Table 302.4 in today's final rule.

b. Statutory RQ Column

When Table 302.4 was first published in the **Federal Register** in 1985, the Statutory RQ column served a useful purpose because (1) CWA hazardous substances generally had different statutory RQs than other CERCLA hazardous substances; and (2) the Agency had not yet adjusted many of the statutory RQs for these substances.

Today, however, all of the statutory RQs for the CWA hazardous substances have been adjusted and, for any new substance added to Table 302.4, the statutory RQ is always one pound. When new substances are added to the list, footnote ''##'' is added to the Final RQ Pounds column indicating that the substance has a one-pound statutory RQ; thus, the Statutory RQ column provides only redundant or obsolete information. In addition, this column can be a source of errors; for example, at least seven substances have had incorrect information in the Statutory RQ column. EPA is deleting the Statutory RQ column from Table 302.4 in today's final rule.

c. Final RQ Category Column

The ''Final RQ Category'' column was used in Table 302.4 in the first CERCLA reporting program final rule on April 4, 1985, because members of the regulated community were familiar with a similar association between letter categories and numerical RQs (X = 1 pound, A = 10 pounds, B = 100 pounds, etc.) in the Clean Water Act (CWA) hazardous substance regulations (40 CFR part 117). The CWA categories, however, correspond to ranges of aquatic toxicity, while the CERCLA categories are simply another way of expressing the RQ value. EPA originally proposed the CWA categories (A, B, C, and D) in 1975, based on the hazardous material classification system for a 1973 international convention. A 1978 final rule for CWA RQs added another category (X).

The Category column provides little or no useful information on the CERCLA list of hazardous substances in Table 302.4, because the next column gives the RQ in pounds. Today, the category is a source of errors and confusion. For example, prior to today's rulemaking, the category for six substances was incorrectly listed as X, even though the RQs are 10, 100, or 1000 pounds. EPA is deleting the Category column from Table 302.4 in today's final rule.

2. Revisions to the Note Preceding Table 302.4

Because EPA is removing the Regulatory Synonyms, Statutory Code, and Final RQ Category columns from Table 302.4 in today's rulemaking, we are revising the note that precedes Table 302.4 to remove references to these columns. The revised note will also identify Appendix A to Section 302.4 as a source for identifying regulatory synonyms of substances that appear on the CERCLA list of hazardous substances.

3. Corrections to Errors in Table 302.4

EPA has identified other errors in Table 302.4. The majority of these errors are either typographical or the result of inadvertent omissions; the scope of what is regulated and how it is regulated will not change. Therefore, these corrections qualify for the ''good cause'' exemption as ''minor or technical amendments.''

a. What Corrections Are Being Made to Entries for Individual Substances?

The most commonly found errors in Table 302.4 are inadvertent discrepancies between an individual hazardous substance name that appears on the CERCLA list and the same name as it appears in other statutes (i.e., RCRA section 3001, CWA sections 307 and 311, and CAA section 112) and their implementing regulations. In today's rule, EPA is making corrections to the hazardous substance names of a number of CERCLA entries to make them consistent with names that appear in these other regulatory lists. Many of these corrections are simple and involve, for example, the deletion of an unnecessary hyphen or the addition of parentheses. In addition, to help make each entry more readable, we are changing all of the CASRNs listed in Table 302.4 to include hyphens in the appropriate places (e.g., changing ''50000'' to ''50–00–0'' for formaldehyde). Other types of corrections to Table 302.4 included in today's rule that require more explanation are described below.

TABLE 1.—CORRECTIONS TO ENTRIES FOR INDIVIDUAL SUBSTANCES IN TABLE 302.4

Current entry in Table 302.4 of 40 CFR 302.4	Change needed to correct error
Acetic acid, (2,4,5-trichlorophenoxy)	RCRA ''U'' waste numbers are no longer associated with these substances in the RCRA regulations at 40 CFR part 261; rather, each of the RCRA waste numbers for these substances has been replaced with the following note: ''See F027.'' Conforming changes are being made to these entries in Table 302.4.
Pentachlorophenol	
Phenol, pentachloro-	
Phenol, 2,3,4,6-tetrachloro-	
Phenol, 2,4,5-trichloro-	
Phenol, 2,4,6-trichloro-	
Silvex (2,4,5-TP)	
2,4,5-T	
2,4,5-T acid	
2,3,4,6-Tetrachlorophenol 2,4,5-TP acid	
2,4,5-Trichlorophenol	Each of these substances is listed twice in Table 302.4. We are removing the duplicative entries from Table 302.4 in today's rule.
2,4,6-Trichlorophenol	In addition, because these substances appear in CAA section 112, a ''3'' is being added to the statutory code column for these entries in Table 302.4.
	Also, ''U'' waste numbers are no longer associated with these substances and have been replaced with: ''See F027.''
Propionic acid, 2-(2,4,5-trichlorophenoxy)-	To be consistent with RCRA regulations, the spelling of this substance name is being changed in Table 302.4 to ''Propanoic acid, 2-(2,4,5-trichlorophenoxy).''
	In addition, RCRA waste number ''U233'' is no longer associated with this substance and has been replaced with: ''See F027.''
Arsenic acid H3AsO4	''Arsenic acid'' with CASRN 1327–52–2 is not listed in RCRA, the CAA, the CWA, or their implementing regulations. Thus, the entry for ''Arsenic acid'' is being deleted from Table 302.4. In addition, CASRN 1327–52–2 is being deleted from the ''Arsenic acid H3AsO4'' listing. Arsenic acid H3AsO4 with CASRN 7778–39–4 remains listed in Table 302.4.
Arsenic acid	
Cyanogen bromide(CN)Br	''Cyanogen bromide'' is not listed in RCRA, the CAA, the CWA, or their implementing regulations, although its synonym ''Cyanogen bromide(CN)Br'' is listed in the RCRA regulations. Thus, the entry for ''Cyanogen bromide'' is being deleted from Table 302.4.
Cyanogen bromide	
Aroclors	Aroclors 1016, 1221, 1232, 1242, 1248, 1254, and 1260 are listed as separate entries in Table 302.4. These seven aroclors also appear indented beneath the entries for ''Aroclors,'' ''PCBs,'' and ''POLYCHLORINATED BIPHENYLS.'' The duplicative indented entries for the seven aroclors are being deleted. In addition, conforming changes are being made to the Appendix A entries for these seven aroclors.
PCBs	
POLYCHLORINATED BIPHENYLS	
Bis(2-ethylhexyl) phthalate	This substance is listed in the CAA, but a ''3'' was never added to the statutory code column. A ''3'' is being added to the column in today's rule.
Calcium cyanide	Each of these substances is listed twice (once with a chemical formula and once without the formula) in the RCRA or CWA regulations and in Table 302.4. In the interest of avoiding duplicative entries in Table 302.4, the non-formula entries for these substances are being removed in today's rule.
Copper cyanide	
Cyanogen chloride	
Hydrogen sulfide	
Nickel carbonyl	
Nickel cyanide	
Potassium cyanide	
Selenium sulfide	
Silver cyanide	
Sodium cyanide	
Thallium (I) chloride	
Zinc cyanide	
Zinc phosphide	
1,10-(1,2-Phenylene)pyrene	These synonyms are not listed in RCRA, the CAA, the CWA, or their implementing regulations and are being removed from Table 302.4 and Appendix A in today's rule. Other names for these same substances remain listed in Table 302.4 and Appendix A.
Methyl chloroformate	
Muscimol	
Tetrachloroethene	
Benzene, hydroxy-	
Benzo [j,k] fluorene	
1,2-Benzphenanthrene	
Camphene, octachloro-	
4-Chloro-m-cresol	
1,4-Diethylenedioxide	
Hexachlorocyclohexane (gamma isomer)	
Trichloroethene	
Carbaryl	These six substances appear in Table 302.4 by virtue of their listing on the Clean Water Act or Clean Air Act. In a February 9, 1995 final rule (60 FR 7824), EPA added a number of synonyms to the RCRA regulations for these substances. To be consistent, the synonyms for these substances are being added to Table 302.4 and Appendix A in today's rule. In addition, a ''4'' is being added to the statutory code column for these entries in Table 302.4.
Carbofuran	
Mercaptodimethur	
Mexacarbate	
Propoxur (Baygon)	
Triethylamine	

TABLE 1.—CORRECTIONS TO ENTRIES FOR INDIVIDUAL SUBSTANCES IN TABLE 302.4—Continued

Current entry in Table 302.4 of 40 CFR 302.4	Change needed to correct error
2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when present at concentrations greater than 0.3%.	The RCRA regulations include two listings for this substance: (1) One when present at concentrations greater than 0.3% (P001); and (2) another when present at concentrations of 0.3% or less (U248). Only the first currently appears on Table 302.4. This entry is being deleted from Table 302.4 and replaced with an entry that covers both RCRA listings, as follows: ''2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts'' In addition to ''P001,'' ''U248'' is being added to this entry as an additional RCRA waste number.
Warfarin, & salts, when present at concentrations greater than 0.3%.	The RCRA regulations include two listings for this substance: (1) One when present at concentrations greater than 0.3% (P001); and (2) another when present at concentrations of 0.3% or less (U248). Only the first currently appears on Table 302.4. This entry is being deleted from Table 302.4 and replaced with an entry that covers both RCRA listings, as follows: ''Warfarin, & salts'' In addition to ''P001,'' ''U248'' is being added to this entry as an additional RCRA waste number.
Zinc phosphide Zn3P2, when present at concentrations greater than 10%.	The RCRA regulations include two listings for this substance: (1) One when present at concentrations greater than 10% (P122); and (2) another when present at concentrations of 10% or less (U249). Only the first currently appears on Table 302.4. This entry is being deleted from Table 302.4 and replaced with an entry that covers both RCRA listings, as follows: ''Zinc phosphide Zn3P2'' In addition to ''P122,'' ''U249'' is being added to this entry as an additional RCRA waste number.
Beryllium powder	Prior to 1994, the Table listed Beryllium (from the CAA), BERYLLIUM AND COMPOUNDS (from the CWA), and Beryllium dust (from the RCRA regulations). On June 20, 1994, EPA changed the term Beryllium dust to Beryllium powder in 40 CFR part 261 (RCRA). At the same time, this change was also made in Table 302.4 and Appendix A, but the listing for Beryllium was removed inadvertently. The listing for Beryllium is being restored in Table 302.4 in today's rule.
Methane, bromo-	Although synonyms for bromomethane (e.g., methane, bromo-) appear in Table 302.4, ''Bromomethane'' does not appear as a separate listing in the hazardous substance column in Table 302.4. However, bromomethane is listed in section 112 of the CAA. Thus, a new entry for the synonym ''Bromomethane'' is being added.
Dichloromethyl ether	Although a synonym (dichloromethyl ether) for bis(chloromethyl) ether appears in Table 302.4, ''Bis(chloromethyl) ether'' does not appear as a separate listing. However, this chemical name is included in section 112 of the CAA. Thus, a new entry for the synonym ''Bis(chloromethyl) ether'' is being added.
CHLORDANE (TECHNICAL MIXTURE AND METABOLITES)	Two entries for ''CHLORDANE (TECHNICAL MIXTURE AND METABOLITES)'' appear in Table 302.4: (1) one with no CASRN and no RQ; and (2) another entry with CASRN 57749 and an RQ of one pound. In a June 12, 1995 final rule, EPA intended to remove the first entry and replace it with the second one; however, the first entry was never removed. The first entry with no CASRN or RQ is being removed in today's rule.
m-, o-, and p-isomers for Benzene, dimethyl and Cresylic acid.	CAA section 112 lists individual isomers for Cresol and Xylenes, but not for these synonyms. To be consistent with the underlying source lists, entries for the m-, o-, and p-isomers that were indented beneath the entries for Benzene, dimethyl and Cresylic acid are being deleted from Table 302.4.
Multi Source Leachate	In a June 1, 1990 final rule (55 FR 22720), EPA erroneously listed waste stream F039 on Table 302.4 as ''Multi Source Leachate'' alphabetically listed under the letter ''M.'' In today's rule, EPA is deleting the entry for ''Multi Source Leachate'' and adding the correct entry for ''F039'' to Table 302.4, immediately following the entry for waste stream F038.
Bromoform	This substance is listed in the CAA, but a ''3'' was never added to the Statutory Code column. A ''3'' is being added to the column in today's rule.
1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5alpha, 8alpha,.	A correction to this listing is needed because of a typesetting mistake; the entry should end with ''8abeta)-.'' This final portion was inadvertantly moved to the beginning of the next entry on Table 302.4. Other minor editorial corrections are also being made.
8abeta)-1,4,5,8-Dimethanonaphthalene,1,2,3,4, 10,10-hexachloro-1,4,4a,5,8,8a-hexahydro,(1alpha,4alpha,4abeta,5abeta,8beta,.	Again, corrections are needed because of a typesetting mistake; the entry should begin with ''1,4,5 . . .'' and should end with ''8abeta)-.''
8abeta)-2,7:3,6-Dimethanonaphth [2,3-b]oxirene,3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1aalpha,2beta, 2aalpha,3beta,6beta,.	Again, corrections are needed because of a typesetting mistake.
6aalpha,7beta,7aalpha)-2,7:3,6-Dimethanonaphth[2,3-b] oxirene,3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1aalpha,2beta,2abeta,3alpha, 6alpha,.	Again, corrections are needed because of a typesetting mistake. In addition, the words ''& metabolites'' are being added to the end of the entry to be consistent with the entry for this substance in the RCRA regulations.
6abeta,7beta,7aalpha)-Dimethoate	Again, corrections are needed because of a typesetting mistake.

TABLE 1.—CORRECTIONS TO ENTRIES FOR INDIVIDUAL SUBSTANCES IN TABLE 302.4—Continued

Current entry in Table 302.4 of 40 CFR 302.4	Change needed to correct error
1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide	To be consistent with the listing for this substance in the RCRA regulations, the words ''& salts'' are being added to the end of this entry.
Creosote	Because the RCRA regulations do not list a CASRN for this listing, CASRN 8001589 is being removed from 302.4 and replaced with ''N.A.''
Cyanides (soluble salts and complexes) not otherwise specified.	Because the RCRA regulations do not list a CASRN for this listing, CASRN 57125 is being removed from 302.4 and replaced with ''N.A.''
Pyridine, 3-(1-methyl-2-pyrrolidinyl)-,(S)-	To be consistent with the listing for this substance in the RCRA regulations, the words ''& salts'' are being added to the end of this entry.
Strychnidin-10-one	To be consistent with the listing for this substance in the RCRA regulations, the words ''& salts'' are being added to the end of this entry.

b. What Corrections Are Being Made to Entries for the F- and K-Waste Streams?

The most commonly found errors in the entries for hazardous waste streams (i.e., F- and K-waste streams) in Table 302.4 are inadvertent discrepancies between the waste stream description that appears on the CERCLA list and the description for the same waste stream as it appears in the RCRA regulations at 40 CFR 261.31 and 261.32. In the years since Table 302.4 was first published in the CFR in 1985, EPA has amended the descriptions of several waste streams in the RCRA regulations, but did not make conforming changes to these entries in 40 CFR 302.4. EPA does not intend to retain two different descriptions of the same waste stream in the RCRA and CERCLA regulations; thus, we are removing obsolete descriptions of certain waste streams from Table 302.4 and replacing them with the current descriptions from 40 CFR part 261. Some of these corrections are simple; other types of corrections that require more explanation are described below.

TABLE 2.—CORRECTIONS TO ENTRIES FOR F- AND K-WASTE STREAMS IN TABLE 302.4

Current entry in Table 302.4 of 40 CFR 302.4	Change needed to correct error
F024 * * * Wastes, including but not limited to distillation residues, heavy ends, tars, and reactor cleanout wastes, from the production of chlorinated aliphatic hydrocarbons, having carbon content from one to five, utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent dessicants(sic), wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in § 261.32).	To be consistent with the listing for this waste stream in the RCRA regulations, the waste stream description in Table 302.4 should be changed to read as follows: ''F024 * * * Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free redical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in 40 CFR 261.31 or 261.32).''
K069 * * * Emission control dust/sludge from secondary lead smelting	40 CFR 261.32 contains a note about an administrative stay for K069. To be consistent, the following note will be added to the end of this entry in Table 302.4: ''(NOTE: This listing is stayed administratively for sludge generated from secondary acid scrubber systems. The stay will remain in effect until further administrative action is taken. If EPA takes further action effecting this stay, EPA will publish a notice of the action in the **Federal Register**.)''
K083 * * * Distillation bottoms from aniline extraction	To be consistent with the listing for this waste stream in the RCRA regulations, the word ''extraction'' should be changed to read ''production.''
K117 * * * Wastewater from the reaction vent gas scrubber in the production of ethylene bromide via bromination of ethene.	To be consistent with the listing for this waste stream in the RCRA regulations, the word ''reaction'' should be changed to ''reactor'' and the word ''bromide'' should be changed to ''dibromide.''
K118 * * * Spent absorbent solids from purification of ethylene dibromide in the production of ethylene dibromide.	To be consistent with the listing for this waste stream in the RCRA regulation, the word ''absorbent'' should be changed to ''adsorbent'' and ''via bromination of ethene'' should be added to the end of the entry.
K131 * * * Wastewater from the reactor and spent sulfuric acid from the acid dryer in the production of methyl bromide.	To be consistent with the listing for this waste stream in the RCRA regulations, ''in the production'' should be changed to read ''from the production.''
K132 * * * Spent absorbent and wastewater solids from the production of methyl bromide.	To be consistent with the listing for this waste stream in the RCRA regulations, the word ''separator'' should be added between ''wastewater'' and ''solids.''
K141 * * * Process related from the recovery of coal tar, including, but not limited to, tar collecting sump residues from the production of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations.).	To be consistent with the listing for this waste stream in the RCRA regulations, the waste stream description in Table 302.4 should be changed to read as follows: ''K141 * * * Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludges from coking operations).''

c. What Corrections Are Being Made to Footnotes in Table 302.4?

Because EPA is removing three columns from Table 302.4, two footnotes to the table have to be changed. Footnote ''1*,'' which ''indicates that the 1-pound RQ is a CERCLA statutory RQ,'' only appears in the Statutory RQ column. Because this column is being removed from Table 302.4, footnote ''1*'' also should be removed. In addition, footnote ''##'' is being revised to clarify that statutory RQs are set at one pound.

In addition, information contained in footnotes ''1,'' ''2,'' ''3,'' and ''4'' is repetitive of information included in the note that precedes Table 302.4. Thus, these four footnotes are being removed in today's rule. Footnote ''†'' is being revised to indicate that the statutory sources are defined by 1, 2, 3, and 4, as described in the note that precedes Table 302.4.

d. Why Are Other Errors in Table 302.4 Not Addressed in Today's Rule?

It is important to note that EPA is aware of additional errors in Table 302.4 that are not addressed in today's rulemaking. Because these errors appear to be more than just typographical in nature, we believe that correcting them in a final rule without notice and comment may be inappropriate. For example, the hazardous waste descriptions for F003, F004, and F005 need to be changed to be consistent with the descriptions for these wastes as they appear in the RCRA regulations. However, these waste description changes may necessitate a change in the RQs for these waste streams. Changing the RQ for these wastes would be more appropriately addressed in a notice and comment rulemaking. Although more study of these and other errors is needed, EPA may propose to make additional error corrections in a future rulemaking. EPA is soliciting information from the public identifying any additional errors in Table 302.4 not covered in today's rulemaking and how such errors should be corrected. Comments received that identify such additional errors will not be considered adverse comments on today's rulemaking; rather, these comments may be considered by the Agency in any future error correction rule.

To submit such comments, send an original and two copies of comments referencing docket number 102 RQ–CORRECT to (1) if using regular U.S. Postal Service mail: Docket Coordinator, Superfund Docket Office, (Mail Code 5201G), U.S. Environmental Protection Agency Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or (2) if using special delivery such as overnight express service: Superfund Docket Office, Crystal Gateway One, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

H. Revisions to Appendix A of 40 CFR 302.4

On June 12, 1995 (60 FR 30926), EPA published a final rule that, among other things, added 47 individual CAA hazardous air pollutants to Table 302.4 and adjusted their statutory one-pound RQs. In the same rule, EPA intended to add these 47 substances to, and revise several related entries in, Appendix A to Table 302.4. Unfortunately, the table containing these Appendix A additions and revisions was inadvertently left out of the version of the rule that was published in the **Federal Register**.

Although several correction notices were developed immediately after publication of the rule, the Appendix A corrections were not included among them. EPA is making the Appendix A corrections for the June 12, 1995 final rule in today's rulemaking.

In addition, several other corrections are being made to typographical errors in Appendix A, as indicated in the table below. Many of these corrections are necessary to be consistent with corresponding changes to Table 302.4 that were described previously in this preamble.

TABLE 3.—CORRECTIONS TO ENTRIES IN APPENDIX A TO 40 CFR 302.4

Current entry in Appendix A to 40 CFR 302.4	Change needed to correct error
Appendix A:	
1,2,3-Trichloropropane (CASRN 96–18–4)	These substances do not appear in Table 302.4 and are being removed from Appendix A.
Diphenylamine (CASRN 122–39–4)	
n-2,3&-Dichloropropanol (CASRN 616–23–9)	
1,10-(1,2-Phenylene)pyrene (CASRN 193–39–5)	As noted previously, this synonym is no longer listed in the RCRA regulations and is being removed from Table 302.4 and Appendix A. Another name for this same substance (''Indeno(1,2,3-cd)pyrene'') remains listed in Appendix A.
CAS #108101	The synonym ''Hexone,'' which already appears in Table 302.4, is being added to this entry in Appendix A.
Arsenic Acid H_3As0_4 (CASRN 1327522)	As described in Table 1, these CASRNs are removed from Table 302.4 and, thus, also are being removed from Appendix A.
Creosote (CASRN 8001589)	
Cyanides (soluble salts and complexes) not otherwise specified (CASRN 57125)	
CAS #492808	The second chemical name listed should be ''Benzenamine, 4,4′-carbonimidoylbis (N,N- dimethyl-.'' The rest of the entry, ''(N,N-D,methyl-)-,'' is incorrect and is being removed in today's rule.

Amendatory instruction 7, which immediately precedes appendix A to 40 CFR 302.4 in today's direct final rule, accounts for the addition of the corrected entries for all of these listings, and amendatory instruction 6 accounts for the removal of the previously listed entries that contain errors.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (see Section I.D of today's preamble), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not

significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 et seq.), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the Agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2).

As stated previously (see Section I.D of today's preamble), EPA has made a good cause finding for this final rule and established an effective date of September 9, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 302

Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: June 28, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, Chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

2. Section 302.2 is removed and reserved.

§ 302.2 [Removed and Reserved]

3. Section 302.3 is amended by revising the definitions for ''Release'' and ''Reportable quantity'' to read as follows:

§ 302.3 Definitions.

* * * * *

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes:

(1) Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons;

(2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(3) Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or for the purposes of section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act or any other response action, any release of source, byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and

(4) The normal application of fertilizer;

Reportable quantity (''RQ'') means that quantity, as set forth in this part, the release of which requires notification pursuant to this part;

* * * * *

4. Section 302.4 is amended by revising the note that precedes Table 302.4 and by revising table 302.4 to read as follows:

§ 302.4 Designation of hazardous substances.

* * * * *

Note: The numbers under the column headed ''CASRN'' are the Chemical Abstracts Service Registry Numbers for each hazardous substance. The ''Statutory Code'' column indicates the statutory source for designating each substance as a CERCLA hazardous substance: ''1'' indicates that the statutory source is section 311(b)(2) of the Clean Water Act, ''2'' indicates that the source is section 307(a) of the Clean Water Act, ''3'' indicates that the source is section 112 of the Clean Air Act, and ''4'' indicates that the source is section 3001 of the Resource Conservation and Recovery Act (RCRA). The ''RCRA Waste Number'' column provides the waste identification numbers assigned to various substances by RCRA regulations. The ''Pounds (kg)'' column provides the reportable quantity adjustment for each hazardous substance in pounds and kilograms. Appendix A to § 302.4, which lists CERCLA hazardous substances in sequential order by CASRN, provides a per-substance grouping of regulatory synonyms (i.e., names by which each hazardous substance is identified in other statutes and their implementing regulations).

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Acenaphthene	83–32–9	2		100 (45.4)
Acenaphthylene	208–96–8	2		5000 (2270)
Acetaldehyde	75–07–0	1,3,4	U001	1000 (454)
Acetaldehyde, chloro-	107–20–	4	P023	1000 (454)
Acetaldehyde, trichloro-	75–87–6	4	U034	5000 (2270)
Acetamide	60–35–5	3		100 (45.4)
Acetamide, N-(aminothioxomethyl)-	591–08–2	4	P002	1000 (454)
Acetamide, N-(4-ethoxyphenyl)-	62–44–2	4	U187	100 (45.4)
Acetamide, N-9H-fluoren-2-yl-	53–96–3	3,4	U005	1 (0.454)
Acetamide, 2-fluoro-	6417–640–19–7	4	P057	100 (45.4)
Acetic acid	64–19–7	1		5000 (2270)
Acetic acid, (2,4-dichlorophenoxy)-, salts & esters	94–75–7	1,3,4	U240	100 (45.4)
Acetic acid, ethyl ester	141–78–6	4	U112	5000 (2270)
Acetic acid, fluoro-, sodium salt	62–74–8	4	P058	10 (4.54)
Acetic acid, lead(2+) salt	301–04–2	1,4	U144	10 (4.54)
Acetic acid, thallium(1+) salt	563–68–8	4	U214	100 (45.4)
Acetic acid, (2,4,5-trichlorophenoxy)-	93–76–5	1,4	See F027	1000 (454)
Acetic anhydride	108–24–7	1		5000 (2270)
Acetone	67–64–1	4	U002	5000 (2270)
Acetone cyanohydrin	75–86–5	1,4	P069	10 (4.54)
Acetonitrile	75–05–8	3,4	U003	5000 (2270)
Acetophenone	98–86–2	3,4	U004	5000 (2270)
2-Acetylaminofluorene	53–96–3	3,4	U005	1 (0.454)
Acetyl bromide	506–96–7	1		5000 (2270)
Acetyl chloride	75–36–5	1,4	U006	5000 (2270)
1-Acetyl-2-thiourea	591–08–2	4	P002	1000 (454)
Acrolein	107–02–8	1,2,3,4	P003	1 (0.454)
Acrylamide	79–06–1	3,4	U007	5000 (2270)
Acrylic acid	79–10–7	3,4	U008	5000 (2270)
Acrylonitrile	107–13–1	1,2,3,4	U009	100 (45.4)
Adipic acid	124–04–9	1		5000 (2270)
Aldicarb	116–06–3	4	P070	1 (0.454)
Aldrin	309–00–2	1,2,4	P004	1 (0.454)
Allyl alcohol	107–18–6	1,4	P005	100 (45.4)
Allyl chloride	107–05–1	1,3		1000 (454)
Aluminum phosphide	20859–73–8	4	P006	100 (45.4)
Aluminum sulfate	10043–01–3	1		5000 (2270)
4-Aminobiphenyl	92–67–1	3		1 (0.454)
5-(Aminomethyl)-3-isoxazolol	2763–96–4	4	P007	1000 (454)
4-Aminopyridine	504–24–5	4	P008	1000 (454)
Amitrole	61–82–5	4	U011	10 (4.54)
Ammonia	7664–41–7	1		100 (45.4)
Ammonium acetate	631–61–8	1		5000 (2270)
Ammonium benzoate	1863–63–4	1		5000 (2270)
Ammonium bicarbonate	1066–33–7	1		5000 (2270)
Ammonium bichromate	7789–09–5	1		10 (4.54)
Ammonium bifluoride	1341–49–7	1		100 (45.4)
Ammonium bisulfilte	10192–30–0	1		5000 (2270)
Ammonium carbamate	1111–78–0	1		5000 (2270)
Ammonium carbonate	506–87–6	1		5000 (2270)
Ammonium chloride	12125–02–9	1		5000 (2270)
Ammonium chromate	7788–98–9	1		10 (4.54)
Ammonium citrate, dibasic	3012–65–5	1		5000 (2270)
Ammonium fluoborate	13826–83–0	1		5000 (2270)
Ammonium fluoride	12125–01–8	1		100 (45.4)
Ammonium hydroxide	1336–21–6	1		1000 (454)
Ammonium oxalate	6009–70–7 5972–73–6 14258–49–2	1		5000 (2270)
Ammonium picrate	131–74–8	4	P009	10 (4.54)
Ammonium silicofluoride	16919–19–0	1		1000 (454)
Ammonium sulfamate	7773–06–0	1		5000 (2270)
Ammonium sulfide	12135–76–1	1		100 (45.4)
Ammonium sulfite	10196–04–0	1		5000 (2270)
Ammonium tartrate	14307–43–8 3164–29–2	1		5000 (2270)
Ammonium thiocyanate	1762–95–4	1		5000 (2270)
Ammonium vanadate	7803–55–6	4	P119	1000 (454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Amyl acetate	628–63–7	1		5000 (2270)
iso-Amyl acetate	123–92–2			
sec-Amyl acetate	626–38–0			
tert-Amyl acetate	625–16–1			
Aniline	62–53–3	1,3,4	U012	5000 (2270)
o-Anisidine	90–04–0	3		100 (45.4)
Anthracene	120–12–7	2		5000 (2270)
Antimony††	7440–36–0	2		5000 (2270)
ANTIMONY AND COMPOUNDS	N.A.	2,3		**
Antimony Compounds	N.A.	2,3		**
Antimony pentachloride	7647–18–9	1		1000 (454)
Antimony potassium tartrate	28300–74–5	1		100 (45.4)
Antimony tribromide	7789–61–9	1		1000 (454)
Antimony trichloride	10025–91–9	1		1000 (454)
Antimony trifluoride	7783–56–4	1		1000 (454)
Antimony trioxide	1309–64–4	1		1000 (454)
Argentate(1-), bis(cyano-C)-, potassium	506–61–6	4	P099	1 (0.454)
Aroclor 1016	12674–11–2	1,2,3		1 (0.454)
Aroclor 1221	11104–28–2	1,2,3		1 (0.454)
Aroclor 1232	11141–16–5	1,2,3		1 (0.454)
Aroclor 1242	53469–21–9	1,2,3		1 (0.454)
Aroclor 1248	12672–29–6	1,2,3		1 (0.454)
Aroclor 1254	11097–69–1	1,2,3		1 (0.454)
†Aroclor 1260	11096–82–5	1,2,3		1 (0.454)
Aroclors	1336–36–3	1,2,3		1 (0.454)
Arsenic††	7440–38–2	2,3		1 (0.454)
Arsenic acid H3AsO4	7778–39–4	4	P010	1 (0.454)
ARSENIC AND COMPOUNDS	N.A.	2,3		**
Arsenic Compounds (inorganic including arsine)	N.A.	2,3		**
Arsenic disulfide	1303–32–8	1		1 (0.454)
Arsenic oxide As2O3	1327–53–3	1,4	P012	1 (0.454)
Arsenic oxide As2O5	1303–28–2	1,4	P011	1 (0.454)
Arsenic pentoxide	1303–28–2	1,4	P011	1 (0.454)
Arsenic trichloride	7784–34–1	1		1 (0.454)
Arsenic trioxide	1327–53–3	1,4	P012	1 (0.454)
Arsenic trisulfide	1303–33–9	1		1 (0.454)
Arsine, diethyl-	692–42–2	4	P038	1 (0.454)
Arsinic acid, dimethyl-	75–60–5	4	U136	1 (0.454)
Arsonous dichloride, phenyl-	696–28–6	4	P036	1 (0.454)
Asbestos†††	1332–21–4	2,3		1 (0.454)
Auramine	492–80–8	4	U014	100 (45.4)
Azaserine	115–02–6	4	U015	1 (0.454)
Aziridine	151–56–4	3,4	P054	1 (0.454)
Aziridine, 2-methyl-	75–55–8	3,4	P067	1 (0.454)
Azirino[2',3':3,4]pyrrolo[1,2–a]indole-4,7-dione, 6-amino-8-[[(aminocarbonyl)oxy]methyl]-1,1a,2,8,8a,8b- hexahydro-8a-methoxy-5- methyl-,[1aS- (1aalpha,8beta,8aalpha, 8balpha)]-.	50–07–7	4	U010	10 (4.54)
Barium cyanide	542–62–1	1,4	P013	10 (4.54)
Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	56–49–5	4	U157	10 (4.54)
Benz[c]acridine	225–51–4	4	U016	100 (45.4)
Benzal chloride	98–87–3	4	U017	5000 (2270)
Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-58–5 propynyl)-	23950–58–5	4	U192	5000 (2270)
Benz[a]anthracene	56–55–3	2,4	U018	10 (4.54)
1,2-Benzanthracene	56–55–3	2,4	U018	10 (4.54)
Benz[a]anthracene, 7,12-dimethyl-	57–97–6	4	U094	1 (0.454)
Benzenamine	62–53–3	1,3,4	U012	5000 (2270)
Benzenamine, 4,4'-carbonimidoylbis (N,N dimethyl-	492–80–8	4	U014	100 (45.4)
Benzenamine, 4-chloro-	106–47–8	4	P024	1000 (454)
Benzenamine, 4-chloro-2-methyl-, hydrochloride	3165–93–3	4	U049	100 (45.4)
Benzenamine, N,N-dimethyl-4-(phenylazo)-	60–11–7	3,4	U093	10 (4.54)
Benzenamine, 2-methyl-	95–53–4	3,4	U328	100 (45.4)
Benzenamine, 4-methyl-	106–49–0	4	U353	100 (45.4)
Benzenamine, 4,4'-methylenebis [2-chloro-	101–14–4	3,4	U158	10 (4.54)
Benzenamine, 2-methyl-,hydrochloride	636–21–5	4	U222	100 (45.4)
Benzenamine, 2-methyl-5-nitro-	99–55–8	4	U181	100 (45.4)
Benzenamine, 4-nitro-	100–01–6	4	P077	5000 (2270)
Benzene[a]	71–43–2	1,2,3,4	U019	10 (4.54)
Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)- α-hydroxy-, ethyl ester	510–15–6	3,4	U038	10 (4.54)
Benzene, 1-bromo-4-phenoxy-	101–55–3	2,4	U030	100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Benzenebutanoic acid, 4-[bis(2- chloroethyl)amino]-	305–03–3	4	U035	10 (4.54)
Benzene, chloro-	108–90–7	1,2,3,4	U037	100 (45.4)
Benzene, (chloromethyl)-	100–44–7	1,3,4	P028	100 (45.4)
Benzenediamine, ar-methyl-	95–80–7	3,4	U221	10 (4.54)
	496–72- 0			
	823–40- 5			
	25376- 45–8			
1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	117–81–7	2,3,4	U028	100 (45.4)
1,2-Benzenedicarboxylic acid, dibutyl ester	84–74–2	1,2,3,4	U069	10 (4.54)
1,2-Benzenedicarboxylic acid, diethyl ester	84–66–2	2,4	U088	1000 (454)
1,2-Benzenedicarboxylic acid, dimethyl ester	131–11–3	2,3,4	U102	5000 (2270)
1,2-Benzenedicarboxylic acid, dioctyl ester	117–84–0	2,4	U107	5000 (2270)
Benzene, 1,2-dichloro-	95–50–1	1,2,4	U070	100 (45.4)
Benzene, 1,3-dichloro-	541–73–1	2,4	U071	100 (45.4)
Benzene, 1,4-dichloro-	106–46–7	1,2,3,4	U072	100 (45.4)
Benzene, 1,1'-(2,2-dichloroethylidene) bis[4-chloro-	72–54–8	1,2,4	U060	1 (0.454)
Benzene, (dichloromethyl)-	98–87–3	4	U017	5000 (2270)
Benzene, 1,3-diisocyanatomethyl-	91–08–7	3,4	U223	100 (45.4)
	584–84–9			
	26471–62–5			
Benzene, dimethyl-	1330–20–7	1,3,4	U239	100 (45.4)
1,3-Benzenediol	108–46–3	1,4	U201	5000 (2270)
1,2-Benzenediol,4-[1-hydroxy-2-(methyl amino)ethyl]-	51–43–4	4	P042	1000 (454)
Benzeneethanamine, alpha,alpha-dimethyl-	122–09–8	4	P046	5000 (2270)
Benzene, hexachloro-	118–74–1	2,3,4	U127	10 (4.54)
Benzene, hexahydro-	110–82–7	1,4	U056	1000 (454)
Benzene, methyl-	108–88–3	1,2,3,4	U220	1000 (454)
Benzene, 1-methyl-2,4-dinitro-	121–14–2	1,2,3,4	U105	10 (4.54)
Benzene, 2-methyl-1,3-dinitro-	606–20–2	1,2,4	U106	100 (45.4)
Benzene, (1-methylethyl)-	98–82–8	3,4	U055	5000 (2270)
Benzene, nitro-	98–95–3	1,2,3,4	U169	1000 (454)
Benzene, pentachloro-	608–93–5	4	U183	10 (4.54)
Benzene, pentachloronitro-	82–68–8	3,4	U185	100 (45.4)
Benzenesulfonic acid chloride	98–09–9	4	U020	100 (45.4)
Benzenesulfonyl chloride	98–09–9	4	U020	100 (45.4)
Benzene,1,2,4,5-tetrachloro-	95–94–3	4	U207	5000 (2270)
Benzenethiol	108–98–5	4	P014	100 (45.4)
Benzene,1,1'-(2,2,2-trichloroethylidene) bis[4-chloro-	50–29–3	1,2,4	U061	1 (0.454)
Benzene,1,1'-(2,2,2-trichloroethylidene) bis[4-methoxy-	72–43–5	1,3,4	U247	1 (0.454)
Benzene, (trichloromethyl)-	98–07–7	3,4	U023	10 (4.54)
Benzene, 1,3,5-trinitro-	99–35–4	4	U234	10 (4.54)
Benzidine	92–87–5	2,3,4	U021	1 (0.454)
1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, & salts	81–07–2	4	U202	100 (45.4)
Benzo[a]anthracene	56–55–3	2,4	U018	10 (4.54)
1,3-Benzodioxole, 5-(1-propenyl)-1	120–58–1	4	U141	100 (45.4)
1,3-Benzodioxole, 5-(2-propenyl)-	94–59–7	4	U203	100 (45.4)
1,3-Benzodioxole, 5-propyl-	94–58–6	4	U090	10 (4.54)
1,3-Benzodioxol-4-ol, 2,2-dimethyl-, (Bendiocarb phenol)	22961–82–6	4	U364	##
1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb)	22781–23–3	4	U278	##
Benzo[b]fluoranthene	205–99–2	2		1 (0.454)
Benzo(k)fluoranthene	207–08-9	2		5000 (2270)
7-Benzofuranol, 2,3-dihydro-2,2-dimethyl- (Carbofuran phenol)	1563–38–8	4	U367	##
7-Benzofuranol, 2,3-dihydro-2,2- dimethyl-, methylcarbamate	1563–66–2	1,4	P127	10 (4.54)
Benzoic acid	65–85–0	1		5000 (2270)
Benzoic acid, 2-hydroxy-, compd. with (3aS- cis)-1,2,3,3a,8,8a- hexahydro-1,3a,8- trimethylpyrrolo [2,3- b]indol-5-yl methylcarbamate ester (1:1) (Physostigmine salicylate).	57–64–7	4	P188	##
Benzonitrile	100–47–0	1	—	5000 (2270)
Benzo[rst]pentaphene	189–55–9	4	U064	10 (4.54)
Benzo[ghi]perylene	191–24-2	—	—	5000 (2270)
2H–1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo- 1-phenylbutyl)-, & salts	81–81–2	4	P001 U248	100 (45.4)
Benzo[a]pyrene	50–32–8	2,4	U022	1 (0.454)
3,4-Benzopyrene	50–32–8	2,4	U022	1 (0.454)
ρ-Benzoquinone	106–51–4	3,4	U197	10 (4.54)
Benzotrichloride	98–07–7	3,4	U023	10 (4.54)
Benzoyl chloride	98–88–4	1	—	1000 (454)
Benzyl chloride	100–44–7	1,3,4	P028	100 (45.4)
Beryllium ††	7440–41–7	2,3,4	P015	10 (4.54)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
BERYLLIUM AND COMPOUNDS	N.A.	2,3		**
Beryllium chloride	7787–47–5	1		1 (0.454)
Beryllium compounds	N.A.	2,3		**
Beryllium fluoride	7787–49–7	1		1 (0.454)
Beryllium nitrate	13597–99–4	1		1 (0.454)
	7787–55–5			
Beryllium powder ††	7440–41–7	2,3,4	P015	10 (4.54)
alpha-BHC	319–84–6	2		10 (4.54)
beta-BHC	319–85–7	2		1 (0.454)
delta-BHC	319–86–8	2		1 (0.454)
gamma-BHC	58–89–9	1,2,3,4	U129	1 (0.454)
2,2′-Bioxirane	1464–53–5	4	U085	10 (4.54)
Biphenyl	92–52–4	3		100 (45.4)
[1,1′-Biphenyl]-4,4′-diamine	92–87–5	2,3,4	U021	1 (0.454)
[1,1′-Biphenyl]-4,4′-diamine,3,3′-dichloro-	91–94–1	2,3,4	U073	1 (0.454)
[1,1′-Biphenyl]-4,4′-diamine,3,3′-dimethoxy-	119–90–4	3,4	U091	100 (45.4)
[1,1′-Biphenyl]-4,4′-diamine,3,3′-dimethyl-	119–93–7	3,4	U095	10 (4.54)
Bis(2-chloroethoxy) methane	111–91–1	2,4	U024	1000 (454)
Bis(2-chloroethyl) ether	111–44–4	2,3,4	U025	10 (4.54)
Bis(chloromethyl) ether	542–88–1	2,3,4	P016	10 (4.54)
Bis(2-ethylhexyl) phthalate	117–81–7	3,4	U028	100 (45.4)
Bromoacetone	598–31–2	4	P017	1000 (454)
Bromoform	75–25–2	2,3,4	U225	100 (45.4)
Bromomethane	74–83–9	2,3,4	U029	1000 (454)
4-Bromophenyl phenyl ether	101–55–3	2,4	U030	100 (45.4)
Brucine	357–57–3	4	P018	100 (45.4)
1,3-Butadiene	106–99–0	3		10 (4.54)
1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87–68–3	2,3,4	U128	1 (0.454)
1-Butanamine, N-butyl-N-nitroso-	924–16–3	4	U172	10 (4.54)
1-Butanol	71–36–3	4	U031	5000 (2270)
2-Butanone	78–93–3	3,4	U159	5000 (2270)
2-Butanone, 3,3-dimethyl-1(methylthio)-, O-[(methylamino)carbonyl] oxime	39196–18–4	4	P045	100 (45.4)
2-Butanone peroxide	1338–23–4	4	U160	10 (4.54)
2-Butenal	123–73–9	1,4	U053	100 (45.4)
	4170–30–3			
2-Butene, 1,4-dichloro-	764–41–0	4	U074	1 (0.454)
2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3- methyl-1-oxobutoxy] methyl]-2,3, 5,7a-tetrahydro- 1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z), 7(2S*,3R*),7aalpha]]-.	303–34–4	4	U143	10 (4.54)
Butyl acetate	123–86–4	1		5000 (2270)
iso-Butyl acetate	110–19–0			
sec-Butyl acetate	105–46–4			
tert-Butyl acetate	540–88–5			
n-Butyl alcohol	71–36–3	4	U031	5000 (2270)
Butylamine	109–73–9	1		1000 (454)
iso-Butylamine	78–81–9			
sec-Butylamine	513–49–5			
	13952-84–6			
tert-Butylamine	75–64–9			
Butyl benzyl phthalate	85–68–7	2		100 (45.4)
n-Butyl phthalate	84–74–2	1,2,3,4	U069	10 (4.54)
Butyric acid	107–92–6	1		5000 (2270)
iso-Butyric acid	79–31–2			
Cacodylic acid	75–60–5	4	U136	1 (0.454)
Cadmium ††	7440–43–9	2		10 (4.54)
Cadmium acetate	543–90–8	1		10 (4.54)
CADMIUM AND COMPOUNDS	N.A.	2,3		**
Cadmium bromide	7789–42–6	1		10 (4.54)
Cadmium chloride	10108–64–2	1		10 (4.54)
Cadmium compounds	N.A.	2,3		**
Calcium arsenate	7778–44–1	1		1 (0.454)
Calcium arsenite	52740–16–6	1		1 (0.454)
Calcium carbide	75–20–7	1		10 (4.54)
Calcium chromate	13765–19–0	1,4	U032	10 (4.54)
Calcium cyanamide	156–62–7	3		1000 (454)
Calcium cyanide Ca(CN)2	592–01–8	1,4	P021	10 (4.54)
Calcium dodecylbenzenesulfonate	26264–06–2	1		1000 (454)
Calcium hypochlorite	7778–54–3	1		10 (4.54)
Captan	133–06–2	1,3		10 (4.54)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim)	10605–21–7	4	U372	##
Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester (Benomyl).	17804–35–2	4	U271	##
Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester (Barban)	101–27–9	4	U280	##
Carbamic acid, [(dibutylamino)thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester (Carbosulfan).	55285–14–8	4	P189	##
Carbamic acid, dimethyl-,1-[(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester (Dimetilan).	644–64–4	4	P191	##
Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester (Isolan).	119–38–0	4	P192	##
Carbamic acid, ethyl ester	51–79–6	3,4	U238	100 (45.4)
Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb)	1129–41–5	4	P190	##
Carbamic acid, methylnitroso-, ethyl ester	615–53–2	4	U178	1 (0.454)
Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)] bis-, dimethyl ester (Thiophanate-methyl).	23564–05–8	4	U409	##
Carbamic acid, phenyl-, 1-methylethyl ester (Propham)	122–42–9	4	U373	##
Carbamic chloride, dimethyl-	79–44–7	3,4	U097	1 (0.454)
Carbamodithioic acid, 1,2-ethanediylbis-, salts & esters	111–54–6	4	U114	5000 (2270)
Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2- propenyl) ester	2303–16–4	4	U062	100 (45.4)
Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2- propenyl) ester (Triallate).	2303–17–5	4	U389	##
Carbamothioic acid, dipropyl-, S - (phenylmethyl) ester (Prosulfocarb)	52888–80–9	4	U387	##
Carbaryl	63–25–2	1,3,4	U279	100 (45.4)
Carbofuran	1563–66–2	1,4	P127	10 (4.54)
Carbon disulfide	75–15–0	1,3,4	P022	100 (45.4)
Carbonic acid, dithallium(1+) salt	6533–73–9	4	U215	100 (45.4)
Carbonic dichloride	75–44–5	1,3,4	P095	10 (4.54)
Carbonic difluoride	353–50–4	4	U033	1000 (454)
Carbonochloridic acid, methyl ester	79–22–1	4	U156	1000 (454)
Carbon oxyfluoride	353–50–4	4	U033	1000 (454)
Carbon tetrachloride	56–23–5	1,2,3,4	U211	10 (4.54)
Carbonyl sulfide	463–58–1	3		100 (45.4)
Catechol	120–80–9	3		100 (45.4)
Chloral	75–87–6	4	U034	5000 (2270)
Chloramben	133–90–4	3		100 (45.4)
Chlorambucil	305–03–3	4	U035	10 (4.54)
Chlordane	57–74–9	1,2,3,4	U036	1 (0.454)
Chlordane, alpha & gamma isomers	57–74–9	1,2,3,4	U036	1 (0.454)
CHLORDANE (TECHNICAL MIXTURE AND METABOLITES)	57–74–9	1,2,3,4	U036	1 (0.454)
CHLORINATED BENZENES	N.A.	2		**
Chlorinated camphene	8001–35–2	1,2,3,4	P123	1 (0.454)
CHLORINATED ETHANES	N.A.	2		**
CHLORINATED NAPHTHALENE	N.A.	2		**
CHLORINATED PHENOLS	N.A.	2		**
Chlorine	7782–50–5	1,3		10 (4.54)
Chlornaphazine	494–03–1	4	U026	100 (45.4)
Chloroacetaldehyde	107–20–0	4	P023	1000 (454)
Chloroacetic acid	79–11–8	3		100 (45.4)
2-Chloroacetophenone	532–27–4	3		100 (45.4)
CHLOROALKYL ETHERS	N.A.	2		**
p-Chloroaniline	106–47–8	4	P024	1000 (454)
Chlorobenzene	108–90–7	1,2,3,4	U037	100 (45.4)
Chlorobenzilate	510–15–6	3,4	U038	10 (4.54)
p-Chloro-m-cresol	59–50–7	2,4	U039	5000 (2270)
Chlorodibromomethane	124–48–1	2		100 (45.4)
1-Chloro-2,3-epoxypropane	106–89–8	1,3,4	U041	100 (45.4)
Chloroethane	75–00–3	2,3		100 (45.4)
2-Chloroethyl vinyl ether	110–75–8	2,4	U042	1000 (454)
Chloroform	67–66–3	1,2,3,4	U044	10 (4.54)
Chloromethane	74–87–3	2,3,4	U045	100 (45.4)
Chloromethyl methyl ether	107–30–2	3,4	U046	10 (4.54)
beta-Chloronaphthalene	91–58–7	2,4	U047	5000 (2270)
2-Chloronaphthalene	91–58–7	2,4	U047	5000 (2270)
2-Chlorophenol	95–57–8	2,4	U048	100 (45.4)
o-Chlorophenol	95–57–8	2,4	U048	100 (45.4)
4-Chlorophenyl phenyl ether	7005–72–3	2		5000 (2270)
1-(o-Chlorophenyl)thiourea	5344–82–1	4	P026	100 (45.4)
Chloroprene	126–99–8	3		100 (45.4)
3-Chloropropionitrile	542–76–7	4	P027	1000 (454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Chlorosulfonic acid	7790–94–5	1		1000 (454)
4-Chloro-o-toluidine, hydrochloride	3165–93–3	4	U049	100 (45.4)
Chlorpyrifos	2921–88–2	1		1 (0.454)
Chromic acetate	1066–30–4	1		1000 (454)
Chromic acid	11115–74–5	1		10 (4.54)
	7738–94–5			
Chromic acid H2CrO4, calcium salt	13765–19–0	1,4	U032	10 (4.54)
Chromic sulfate	10101–53–8	1		1000 (454)
Chromium ††	7440–47–3	2		5000 (2270)
CHROMIUM AND COMPOUNDS	N.A.	2,3		**
Chromium Compounds	N.A.	2,3		**
Chromous chloride	10049–05–5	1		1000 (454)
Chrysene	218–01–9	2,4	U050	100 (45.4)
Cobalt Compounds	N.A.	3		**
Cobaltous bromide	7789–43–7	1		1000 (454)
Cobaltous formate	544–18–3	1		1000 (454)
Cobaltous sulfamate	14017–41–5	1		1000 (454)
Coke Oven Emissions	N.A.	3		1 (0.454)
Copper ††	7440–50–8	2		5000 (2270)
COPPER AND COMPOUNDS	N.A.	2		**
Copper cyanide Cu(CN)	544–92–3	4	P029	10 (4.54)
Coumaphos	56–72–4	1		10 (4.54)
Creosote	N.A.	4	U051	1 (0.454)
Cresol (cresylic acid)	1319–77–3	1,3,4	U052	100 (45.4)
m-Cresol	108–39–4	3		100 (45.4)
o-Cresol	95–48–7	3		100 (45.4)
p-Cresol	106–44–5	3		100 (45.4)
Cresols (isomers and mixture)	1319–77–3	1,3,4	U052	100 (45.4)
Cresylic acid (isomers and mixture)	1319–77–3	1,3,4	U052	100 (45.4)
Crotonaldehyde	123–73–9	1,4	U053	100 (45.4)
	4170–30–3			
Cumene	98–82–8	3,4	U055	5000 (2270)
Cupric acetate	142–71–2	1		100 (45.4)
Cupric acetoarsenite	12002–03–8	1		1 (0.454)
Cupric chloride	7447–39–4	1		10 (4.54)
Cupric nitrate	3251–23–8	1		100 (45.4)
Cupric oxalate	589366–3	1		100 (45.4)
Cupric sulfate	7758–98–7	1		10 (4.54)
Cupric sulfate, ammoniated	10380–29–7	1		100 (45.4)
Cupric tartrate	815–82–7	1		100 (45.4)
Cyanide Compounds	N.A.	2,3		**
CYANIDES	N.A.	2,3		**
Cyanides (soluble salts and complexes) not otherwise specified	N.A.	4	P030	10 (4.54)
Cyanogen	460–19–5	4	P031	100 (45.4)
Cyanogen bromide (CN)Br	506–68–3	4	U246	1000 (454)
Cyanogen chloride (CN)Cl	506–77–4	1,4	P033	10 (4.54)
2,5-Cyclohexadiene-1,4-dione	106–51–4	3,4	U197	10 (4.54)
Cyclohexane	110–82–7	1,4	U056	1000 (454)
Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α, 2α, 3β, 4α, 5α, 6β)	58–89–9	1,2,3,4	U129	1 (0.454)
Cyclohexanone	108–94–1	4	U057	5000 (2270)
2-Cyclohexyl-4,6-dinitrophenol	131–89–5	4	P034	100 (45.4)
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77–47–4	1,2,3,4	U130	10 (4.54)
Cyclophosphamide	50–18–0	4	U058	10 (4.54)
2,4-D Acid	94–75–7	1,3,4	U240	100 (45.4)
2,4-D Ester	94–11–1	1		100 (45.4)
	94–79–1			
	94–80–4			
	1320–18–9			
	1928–38–7			
	1928–61–6			
	1929–73–3			
	2971–38–2			
	25168–26–7			
	53467–11–1			
2,4-D, salts and esters	94–75–7	1,3,4	U240	100 (45.4)
Daunomycin	20830–81–3	4	U059	10 (4.54)
DDD	72–54–8	1,2,4	U060	1 (0.454)
4,4′-DDD	72–54–8	1,2,4	U060	1 (0.454)
DDE [b]	72–55–9	2		1 (0.454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
DDE [b]	3547–04–4	3		5000 (2270)
4,4′-DDE	72–55–9	2		1 (0.454)
DDT	50–29–3	1,2,4	U061	1 (0.454)
4,4′-DDT	50–29–3	1,2,4	U061	1 (0.454)
DDT AND METABOLITES	N.A.	2		**
DEHP	117–81–7	2,3,4	U028	100 (45.4)
Diallate	2303–16–4	4	U062	100 (45.4)
Diazinon	333–41–5	1		1 (0.454)
Diazomethane	334–88–3	3		100 (45.4)
Dibenz[a,h]anthracene	53–70–3	2,4	U063	1 (0.454)
1,2:5,6-Dibenzanthracene	53–70–3	2,4	U063	1 (0.454)
Dibenzo[a,h]anthracene	53–70–3	2,4	U063	1 (0.454)
Dibenzofuran	132–64–9	3		100 (45.4)
Dibenzo[a,i]pyrene	189–55–9	4	U064	10 (4.54)
1,2-Dibromo-3-chloropropane	96–12–8	3,4	U066	1 (0.454)
Dibromoethane	106–93–4	1,3,4	U067	1 (0.454)
Dibutyl phthalate	84–74–2	1,2,3,4	U069	10 (4.54)
Di-n-butyl phthalate	84–74–2	1,2,3,4	U069	10 (4.54)
Dicamba	1918–00–9	1		1000 (454)
Dichlobenil	1194–1–65–6	1		100 (45.4)
Dichlone	117–80–6	1		1 (0.454)
Dichlorobenzene	25321–22–6	1		100 (45.4)
1,2-Dichlorobenzene	95–50–1	1,2,4	U070	100 (45.4)
1,3-Dichlorobenzene	541–73–1	2,4	U071	100 (45.4)
1,4-Dichlorobenzene	106–46–7	1,2,3,4	U072	100 (45.4)
m-Dichlorobenzene	541–73–1	2,4	U071	100 (45.4)
o-Dichlorobenzene	95–50–1	1,2,4	U070	100 (45.4)
p-Dichlorobenzene	106–46–7	1,2,3,4	U072	100 (45.4)
DICHLOROBENZIDINE	N.A.	2		**
3,3′-Dichlorobenzidine	91–94–1	2,3,4	U073	1 (0.454)
Dichlorobromomethane	75–27–4	2		5000 (2270)
1,4-Dichloro-2-butene	764–41–0	4	U074	1 (0.454)
Dichlorodifluoromethane	75–71–8	4	U075	5000 (2270)
1,1-Dichloroethane	75–34–3	2,3,4	U076	1000 (454)
1,2-Dichloroethane	107–06–2	1,2,3,4	U077	100 (45.4)
1,1-Dichloroethylene	75–35–4	1,2,3,4	U078	100 (45.4)
1,2-Dichloroethylene	156–60–5	2,4	U079	1000 (454)
Dichloroethyl ether	111–44–4	2,3,4	U025	10 (4.54)
Dichloroisopropyl ether	108–60–1	2,4	U027	1000 (454)
Dichloromethane	75–09–2	2,3,4	U080	1000 (454)
Dichloromethoxyethane	111–91–1	2,4	U024	1000 (454)
Dichloromethyl ether	542–88–1	2,3,4	P016	10 (4.54)
2,4-Dichlorophenol	120–83–2	2,4	U081	100 (45.4)
2,6-Dichlorophenol	87–65–0	4	U082	100 (45.4)
Dichlorophenylarsine	696–28–6	4	P036	1 (0.454)
Dichloropropane	26638–19–7	1		1000 (454)
1,1-Dichloropropane	78–99–9			
1,3-Dichloropropane	142–28–9			
1,2-Dichloropropane	78–87–5	1,2,3,4	U083	1000 (454)
Dichloropropane—Dichloropropene (mixture)	8003–19–8	1		100 (45.4)
Dichloropropene	26952–23–8	1		100 (45.4)
2,3-Dichloropropene	78–88–6			
1,3-Dichloropropene	542–75–6	1,2,3,4	U084	100 (45.4)
2,2-Dichloropropionic acid	75–99–0	1		5000 (2270)
Dichlorvos	62–73–7	1,3		10 (4.54)
Dicofol	115–32–2	1		10 (4.54)
Dieldrin	60–57–1	1,2,4	P037	1 (0.454)
1,2:3,4-Diepoxybutane	1464–53–5	4	U085	10 (4.54)
Diethanolamine	111–42–2	3		100 (45.4)
Diethylamine	109–89–7	1		100 (45.4)
N,N-Diethylaniline	91–66–7	3		1000 (454)
Diethylarsine	692–42–2	4	P038	1 (0.454)
1,4-Diethyleneoxide	123–91–1	3,4	U108	100 (45.4)
Diethylhexyl phthalate	117–81–7	2,3,4	U028	100 (45.4)
N,N′-Diethylhydrazine	1615–80–1	4	U086	10 (4.54)
O,O-Diethyl S-methyl dithiophosphate	3288–58–2	4	U087	5000 (2270)
Diethyl-p-nitrophenyl phosphate	311–45–5	4	P041	100 (45.4)
Diethyl phthalate	84–66–2	2,4	U088	1000 (454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
O,O-Diethyl O-pyrazinyl phosphorothioate	297–97–2	4	P040	100 (45.4)
Diethylstilbestrol	56–53–1	4	U089	1 (0.454)
Diethyl sulfate	64–67–5	3		10 (4.54)
Dihydrosafrole	94–58–6	4	U090	10 (4.54)
Diisopropylfluorophosphate (DFP)	55–91–4	4	P043	100 (45.4)
1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5alpha, 8alpha,8abeta)-.	309–00–2	1,2,4	P004	1 (0.454)
1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro- 1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta, 5beta,8beta,8abeta)-.	465–73–6	4	P060	1 (0.454)
2,7:3,6-Dimethanonaphth[2,3- b]oxirene,3,4,5,6,9,9- hexachloro-1a,2,2a,3,6,6a,7,7a- octahydro-,(1aalpha,2beta, 2aalpha,3beta,6beta,6aalpha, 7beta,7aalpha)-.	60–57–1	1,2,4	P037	1 (0.454)
2,7:3,6-Dimethanonaphth[2, 3-b]oxirene,3,4,5,6,9,9- hexachloro-1a,2,2a,3,6,6a,7,7a- octahydro-,(1aalpha,2beta, 2abeta,3alpha,6alpha, 6abeta,7beta,7aalpha)-, & metabolites.	72–20–8	1,2,4	P051	1 (0.454)
Dimethoate	60–51–5	4	P044	10 (4.54)
3,3′-Dimethoxybenzidine	119–90–4	3,4	U091	100 (45.4)
Dimethylamine	124–40–3	1,4	U092	1000 (454)
Dimethyl aminoazobenzene	60–11–7	3,4	U093	10 (4.54)
p-Dimethylaminoazobenzene	60–11–7	3,4	U093	10 (4.54)
N,N-Dimethylaniline	121–69–7	3		100 (45.4)
7,12-Dimethylbenz[a]anthracene	57–97–6	4	U094	1 (0.454)
3,3′-Dimethylbenzidine	119–93–7	3,4	U095	10 (4.54)
alpha,alpha-Dimethylbenzylhydroperoxide	80–15–9	4	U096	10 (4.54)
Dimethylcarbamoyl chloride	79–44–7	3,4	U097	1 (0.454)
Dimethylformamide	68–12–2	3		100 (45.4)
1,1-Dimethylhydrazine	57–14–7	3,4	U098	10 (4.54)
1,2-Dimethylhydrazine	540–73–8	4	U099	1 (0.454)
alpha,alpha-Dimethylphenethylamine	122–09–8	4	P046	5000 (2270)
2,4-Dimethylphenol	105–67–9	2,4	U101	100 (45.4)
Dimethyl phthalate	131–11–3	2,3,4	U102	5000 (2270)
Dimethyl sulfate	77–78–1	3,4	U103	100 (45.4)
Dinitrobenzene (mixed)	25154–54–5	1		100 (45.4)
m-Dinitrobenzene	99–65–0			
o-Dinitrobenzene	528–29–0			
p-Dinitrobenzene	100–25–4			
4,6-Dinitro-o-cresol, and salts	534–52–1	2,3,4	P047	10 (4.54)
Dinitrophenol	25550–58–7	1		10 (4.54)
2,5-Dinitrophenol	329–71–5			
2,6-Dinitrophenol	573–56–8			
2,4-Dinitrophenol	51–28–5	1,2,3,4	P048	10 (4.54)
Dinitrotoluene	25321–14–6	1,2		10 (4.54)
3,4-Dinitrotoluene	610–39–9			
2,4-Dinitrotoluene	121–14–2	1,2,3,4	U105	10 (4.54)
2,6-Dinitrotoluene	606–20–2	1,2,4	U106	100 (45.4)
Dinoseb	88–85–7	4	P020	1000 (454)
Di-n-octyl phthalate	117–84–0	2,4	U107	5000 (2270)
1,4-Dioxane	123–91–1	3,4	U108	100 (45.4)
DIPHENYLHYDRAZINE	N.A.	2		**
1,2-Diphenylhydrazine	122–66–7	2,3,4	U109	10 (4.54)
Diphosphoramide, octamethyl-	152–16–9	4	P085	100 (45.4)
Diphosphoric acid, tetraethyl ester	107–49–3	1,4	P111	10 (4.54)
Dipropylamine	142–84–7	4	U110	5000 (2270)
Di-n-propylnitrosamine	621–64–7	2,4	U111	10 (4.54)
Diquat	85–00–7	1		1000 (454)
	2764–72–9			
Disulfoton	298–04–4	1,4	P039	1 (0.454)
Dithiobiuret	541–53–7	4	P049	100 (45.4)
1,3-Dithiolane-2- carboxaldehyde, 2,4- dimethyl-O- [(methylamino)carbonyl] oxime (Tirpate).	26419–73–8	4	P185	##
Diuron	330–54–1	1		100 (45.4)
Dodecylbenzenesulfonic acid	27176–87–0	1		1000 (454)
Endosulfan	115–29–7	1,2,4	P050	1 (0.454)
alpha-Endosulfan	959–98–8	2		1 (0.454)
beta-Endosulfan	33213–65–9	2		1 (0.454)
ENDOSULFAN AND METABOLITES	N.A.	2		**
Endosulfan sulfate	1031–07–8	2		1 (0.454)
Endothall	145–73–3	4	P088	1000 (454)
Endrin	72–20–8	1,2,4	P051	1 (0.454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Endrin aldehyde	7421–93–4	2		1 (0.454)
ENDRIN AND METABOLITES	N.A.	2		**
Endrin, & metabolites	72–20–8	1,2,4	P051	1 (0.454)
Epichlorohydrin	106–89–8	1,3,4	U041	100 (45.4)
Epinephrine	51–43–4	4	P042	1000 (454)
1,2-Epoxybutane	106–88–7	3		100 (45.4)
Ethanal	75–07–0	1,3,4	U001	1000 (454)
Ethanamine, N,N-diethyl-	121–44–8	1,3,4	U404	5000 (2270)
Ethanamine, N-ethyl-N-nitroso-	55–18–5	4	U174	1 (0.454)
1,2-Ethanediamine, N,N-dimethyl-N′-2- pyridinyl-N′-(2- thienylmethyl)-	91–80–5	4	U155	5000 (2270)
Ethane, 1,2-dibromo-	106–93–4	1,3,4	U067	1 (0.454)
Ethane, 1,1-dichloro-	75–34–3	2,3,4	U076	1000 (454)
Ethane, 1,2-dichloro-	107–06–2	1,2,3,4	U077	100 (45.4)
Ethanedinitrile	460–19–5	4	P031	100 (45.4)
Ethane, hexachloro-	67–72–1	2,3,4	U131	100 (45.4)
Ethane, 1,1′-[methylenebis(oxy)]bis[2- chloro-	111–91–1	2,4	U024	1000 (454)
Ethane, 1,1′-oxybis-	60–29–7	4	U117	100 (45.4)
Ethane, 1,1′-oxybis[2-chloro-	111–44–4	2,3,4	U025	10 (4.54)
Ethane, pentachloro-	76–01–7	4	U184	10 (4.54)
Ethane, 1,1,1,2-tetrachloro-	630–20–6	4	U208	100 (45.4)
Ethane, 1,1,2,2-tetrachloro-	79–34–5	2,3,4	U209	100 (45.4)
Ethanethioamide	62–55–5	4	U218	10 (4.54)
Ethane, 1,1,1-trichloro-	71–55–6	2,3,4	U226	1000 (454)
Ethane, 1,1,2-trichloro-	79–00–5	2,3,4	U227	100 (45.4)
Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester (A2213).	30558–43–1	4	U394	##
Ethanimidothioic acid, 2-(dimethylamino)-N-[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl).	23135–22–0	4	P194	##
Ethanimidothioic acid, N-[[(methylamino) carbonyl]oxy]-, methyl ester	16752–77–5	4	P066	100 (45.4)
Ethanimidothioic acid, N,N′[thiobis[(methylimino) carbonyloxy]]bis-, dimethyl ester (Thiodicarb).	59669–26–0	4	U410	##
Ethanol, 2-ethoxy-	110–80–5	4	U359	1000 (454)
Ethanol, 2,2′-(nitrosoimino)bis-	1116–54–7	4	U173	1 (0.454)
Ethanol, 2,2′-oxybis-, dicarbamate (Diethylene glycol, dicarbamate)	5952–26–1	4	U395	##
Ethanone, 1-phenyl-	98–86–2	3,4	U004	5000 (2270)
Ethene, chloro-	75–01–4	2,3,4	U043	1 (0.454)
Ethene, (2-chloroethoxy)-	110–75–8	2,4	U042	1000 (454)
Ethene, 1,1-dichloro-	75–35–4	1,2,3,4	U078	100 (45.4)
Ethene, 1,2-dichloro-(E)	156–60–5	2,4	U079	1000 (454)
Ethene, tetrachloro-	127–18–4	2,3,4	U210	100 (45.4)
Ethene, trichloro-	79–01–6	1,2,3,4	U228	100 (45.4)
Ethion	563–12–2	1		10 (4.54)
Ethyl acetate	141–78–6	4	U112	5000 (2270)
Ethyl acrylate	140–88–5	3,4	U113	1000 (454)
Ethylbenzene	100–41–4	1,2,3		1000 (454)
Ethyl carbamate	51–79–6	3,4	U238	100 (45.4)
Ethyl chloride	75–00–3	2,3		100 (45.4)
Ethyl cyanide	107–12–0	4	P101	10 (4.54)
Ethylenebisdithiocarbamic acid, salts & esters	111–54–6	4	U114	5000 (2270)
Ethylenediamine	107–15–3	1		5000 (2270)
Ethylenediamine-tetraacetic acid (EDTA)	60–00–4	1		5000 (2270)
Ethylene dibromide	106–93–4	1,3,4	U067	1 (0.454)
Ethylene dichloride	107–06–2	1,2,3,4	U077	100 (45.4)
Ethylene glycol	107–21–1	3		5000 (2270)
Ethylene glycol monoethyl ether	110–80–5	4	U359	1000 (454)
Ethylene oxide	75–21–8	3,4	U115	10 (4.54)
Ethylenethiourea	96–45–7	3,4	U116	10 (4.54)
Ethylenimine	151–56–4	3,4	P054	1 (0.454)
Ethyl ether	60–29–7	4	U117	100 (45.4)
Ethylidene dichloride	75–34–3	2,3,4	U076	1000 (454)
Ethyl methacrylate	97–63–2	4	U118	1000 (454)
Ethyl methanesulfonate	62–50–0	4	U119	1 (0.454)
Famphur	52–85–7	4	P097	1000 (454)
Ferric ammonium citrate	1185–57–5	1		1000 (454)
Ferric ammonium oxalate	2944–67–4 55488–87–4	1		1000 (454)
Ferric chloride	7705–08–0	1		1000 (454)
Ferric fluoride	7783–50–8	1		100 (45.4)
Ferric nitrate	10421–48–4	1		1000 (454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Ferric sulfate	10028–22–5	1		1000 (454)
Ferrous ammonium sulfate	10045–89–3	1		1000 (454)
Ferrous chloride	7758–94–3	1		100 (45.4)
Ferrous sulfate	7720–78–7	1		1000 (454)
	7782– 63–0			
Fine mineral fibers[c]	N.A.	3		**
Fluoranthene	206–44–0	2,4	U120	100 (45.4)
Fluorene	86–73–7	2		5000 (2270)
Fluorine	7782–41–4	4	P056	10 (4.54)
Fluoroacetamide	640–19–7	4	P057	100 (45.4)
Fluoroacetic acid, sodium salt	62–74–8	4	P058	10 (4.54)
Formaldehyde	50–00–0	1,3,4	U122	100 (45.4)
Formic acid	64–18–6	1,4	U123	5000 (2270)
Fulminic acid, mercury(2+)salt	628–86–4	4	P065	10 (4.54)
Fumaric acid	110–17–8	1		5000 (2270)
Furan	110–00–9	4	U124	100 (45.4)
2-Furancarboxaldehyde	98–01–1	1,4	U125	5000 (2270)
2,5-Furandione	108–31–6	1,3,4	U147	5000 (2270)
Furan, tetrahydro-	109–99–9	4	U213	1000 (454)
Furfural	98–01–1	1,4	U125	5000 (2270)
Furfuran	110–00–9	4	U124	100 (45.4)
Glucopyranose, 2-deoxy-2–(3-methyl-3-nitrosoureido)-,D-	18883–66–4	4	U206	1 (0.454)
D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)-carbonyl]amino]-	18883–66–4	4	U206	1 (0.454)
Glycidylaldehyde	765–34–4	4	U126	10 (4.54)
Glycol ethers[d]	N.A.	3		**
Guanidine, N-methyl-N'-nitro-N-nitroso-	70–25–7	4	U163	10 (4.54)
Guthion	86–50–0	1		1 (0.454)
HALOETHERS	N.A.	2		**
HALOMETHANES	N.A.	2		**
Heptachlor	76–44–8	1,2,3,4	P059	1 (0.454)
HEPTACHLOR AND METABOLITES	N.A.	2		**
Heptachlor epoxide	1024–57–3	2		1 (0.454)
Hexachlorobenzene	118–74–1	2,3,4	U127	10 (4.54)
Hexachlorobutadiene	87–68–3	2,3,4	U128	1 (0.454)
HEXACHLOROCYCLOHEXANE (all isomers)	608–73–1	2		**
Hexachlorocyclopentadiene	77–47–4	1,2,3,4	U130	10 (4.54)
Hexachloroethane	67–72–1	2,3,4	U131	100 (45.4)
Hexachlorophene	70–30–4	4	U132	100 (45.4)
Hexachloropropene	1888–71–7	4	U243	1000 (454)
Hexaethyl tetraphosphate	757–58–4	4	P062	100 (45.4)
Hexamethylene-1,6–diisocyanate	822–06–0	3		100 (45.4)
Hexamethylphosphoramide	680–31–9	3		1 (0.454)
Hexane	110–54–3	3		5000 (2270)
Hexone	108–10–1	3,4	U161	5000 (2270)
Hydrazine	302–01–2	3,4	U133	1 (0.454)
Hydrazinecarbothioamide	79–19–6	4	P116	100 (45.4)
Hydrazine, 1,2-diethyl-	1615–80–1	4	U086	10 (4.54)
Hydrazine, 1,1-dimethyl-	57–14–7	3,4	U098	10 (4.54)
Hydrazine, 1,2-dimethyl-	540–73–8	4	U099	1 (0.454)
Hydrazine, 1,2-diphenyl-	122–66–7	2,3,4	U109	10 (4.54)
Hydrazine, methyl-	60–34–4	3,4	P068	10 (4.54)
Hydrochloric acid	7647–01–0	1,3		5000 (2270)
Hydrocyanic acid	74–90–8	1,4	P063	10 (4.54)
Hydrofluoric acid	7664–39–3	1,3,4	U134	100 (45.4)
Hydrogen chloride	7647–01–0	1,3		5000 (2270)
Hydrogen cyanide	74–90–8	1,4	P063	10 (4.54)
Hydrogen fluoride	7664–39–3	1,3,4	U134	100 (45.4)
Hydrogen phosphide	7803–51–2	3,4	P096	100 (45.4)
Hydrogen sulfide H2S	7783–06–4	1,4	U135	100 (45.4)
Hydroperoxide, 1-methyl-1-phenylethyl-	80–15–9	4	U096	10 (4.54)
Hydroquinone	123–31–9	3		100 (45.4)
2-Imidazolidinethione	96–45–7	3,4	U116	10 (4.54)
Indeno(1,2,3-cd)pyrene	193–39–5	2,4	U137	100 (45.4)
Iodomethane	74–88–4	3,4	U138	100 (45.4)
1,3-Isobenzofurandione	85–44–9	3,4	U190	5000 (2270)
Isobutyl alcohol	78–83–1	4	U140	5000 (2270)
Isodrin	465–73–6	4	P060	1 (0.454)
Isophorone	78–59–1	2,3		5000 (2270)
Isoprene	78–79–5	1		100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Isopropanolamine dodecylbenzenesulfonate	42504–46–1	1		1000 (454)
Isosafrole	120–58–1	4	U141	100 (45.4)
3(2H)-Isoxazolone, 5–(aminomethyl)-	2763–96–4	4	P007	1000 (454)
Kepone	143–50–0	1,4	U142	1 (0.454)
Lasiocarpine	303–34–4	4	U143	10 (4.54)
Lead‡‡	7439–92–1	2		10 (4.54)
Lead acetate	301–04–2	1,4	U144	10 (4.54)
LEAD AND COMPOUNDS	N.A.	2,3		**
Lead arsenate	7784–40–9 7645–25–2 10102–48–4	1		1 (0.454)
Lead, bis(acetato-O)tetrahydroxytri-	1335–32–6	4	U146	10 (4.54)
Lead chloride	7758–95–4	1		10 (4.54)
Lead compounds	N.A.	2,3		**
Lead fluoborate	13814–96–5	1		10 (4.54)
Lead fluoride	7783–46–2	1		10 (4.54)
Lead iodide	10101–63–0	1		10 (4.54)
Lead nitrate	10099–74–8	1		10 (4.54)
Lead phosphate	7446–27–7	4	U145	10 (4.54)
Lead stearate	1072–35–1 7428–48–0 52652–59–2 56189–09–4	1		10 (4.54)
Lead subacetate	1335–32–6	4	U146	10 (4.54)
Lead sulfate	7446–14–2 15739–80–7	1		10 (4.54)
Lead sulfide	1314–87–0	1		10 (4.54)
Lead thiocyanate	592–87–0	1		10 (4.54)
Lindane	58–89–9	1,2,3,4	U129	1 (0.454)
Lindane (all isomers)	58–89–9	1,2,3,4	U129	1 (0.454)
Lithium chromate	14307–35–8	1		10 (4.54)
Malathion	121–75–5	1		100 (45.4)
Maleic acid	110–16–7	1		5000 (2270)
Maleic anhydride	108–31–6	1,3,4	U147	5000 (2270)
Maleic hydrazide	123–33–1	4	U148	5000 (2270)
Malononitrile	109–77–3	4	U149	1000 (454)
Manganese, bis(dimethylcarbamodithioato-S,S′)-Manganese dimethyldithiocarbamate).	15339–36–3	4	P196	##
Manganese Compounds	N.A.	3		**
MDI	101–68–8	3		5000 (2270)
MEK	78–93–3	3,4	U159	5000 (2270)
Melphalan	148–82–3	4	U150	1 (0.454)
Mercaptodimethur	2032–65–7	1,4	P199	10 (4.54)
Mercuric cyanide	592–04–1	1		1(0.454)
Mercuric nitrate	10045–94–0	1		10 (4.54)
Mercuric sulfate	7783–35–9	1		10 (4.54)
Mercuric thiocyanate	592–85–8	1		10 (4.54)
Mercurous nitrate	10415–75–5	1		10 (4.54)
Mercury	7782–86–7 7439–97–6	2,3,4	U151	1 (0.454)
MERCURY AND COMPOUNDS	N.A.	2,3		**
Mercury, (acetato-O)phenyl-	62–38–4	4	P092	100 (45.4)
Mercury Compounds	N.A.	2,3		**
Mercury fulminate	628–86–4	4	P065	10 (4.54)
Methacrylonitrile	126–98–7	4	U152	1000 (454)
Methanamine, N-methyl-	124–40–3	1,4	U092	1000 (454)
Methanamine, N-methyl-N-nitroso-	62–75–9	2,3,4	P082	10 (4.54)
Methane, bromo-	74–83–9	2,3,4	U029	1000 (454)
Methane, chloro-	74–87–3	2,3,4	U045	100 (45.4)
Methane, chloromethoxy-	107–30–2	3,4	U046	10 (4.54)
Methane, dibromo-	74–95–3	4	U068	1000 (454)
Methane, dichloro-	75–09–2	2,3,4	U080	1000 (454)
Methane, dichlorodifluoro-	75–71–8	4	U075	5000 (2270)
Methane, iodo-	74–88–4	3,4	U138	100 (45.4)
Methane, isocyanato-	624–83–9	3,4	P064	10 (4.54)
Methane, oxybis(chloro-	542–88–1	2,3,4	P016	10 (4.54)
Methanesulfenyl chloride, trichloro-	594–42–3	4	P118	100 (45.4)
Methanesulfonic acid, ethyl ester	62–50–0	4	U119	1 (0.454)
Methane, tetrachloro-	56–23–5	1,2,3,4	U211	10 (4.54)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Methane, tetranitro-	509–14–8	4	P112	10 (4.54)
Methanethiol	74–93–1	1,4	U153	100 (45.4)
Methane, tribromo-	75–25–2	2,3,4	U225	100 (45.4)
Methane, trichloro-	67–66–3	1,2,3,4	U044	10 (4.54)
Methane, trichlorofluoro-	75–69–4	4	U121	5000 (2270)
Methanimidamide, N,N-dimethyl-N′-[3-[[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride (Formetanate hydrochloride).	23422–53–9	4	P198	##
Methanimidamide, N,N-dimethyl-N′-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]-(Formparanate).	17702–57–7	4	P197	##
6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3-oxide.	115–29–7	1,2,4	P050	1 (0.454)
4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76–44–8	1,2,3,4	P059	1 (0.454)
4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro- 2,3,3a,4,7,7a-hexahydro——	57–74–9	1,2,3,4	U036	1 (0.454)
Methanol	67–56–1	3,4	U154	5000 (2270)
Methapyrilene	91–80–5	4	U155	5000 (2270)
1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-0one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-.	143–50–0	1,4	U142	1 (0.454)
Methiocarb	2032–65–7	1,4	P199	10 (4.54)
Methomyl	16752–77–5	4	P066	100 (45.4)
Methoxychlor	72–43–5	1,3,4	U247	1 (0.454)
Methyl alcohol	67–56–1	3,4	U154	5000 (2270)
2-Methyl aziridine	75–55–8	3,4	P067	1 (0.454)
Methyl bromide	74–83–9	2,3,4	U029	1000 (454)
1-Methylbutadiene	504–60–9	4	U186	100 (45.4)
Methyl chloride	74–87–3	2,3,4	U045	100 (45.4)
Methyl chlorocarbonate	79–22–1	4	U156	1000 (454)
Methyl chloroform	71–55–6	2,3,4	U226	1000 (454)
3-Methylcholanthrene	56–49–5	4	U157	10 (4.54)
4,4′-Methylenebis(2-chloroaniline)	101–14–4	3,4	U158	10 (4.54)
Methylene bromide	74–95–3	4	U068	1000 (454)
Methylene chloride	75–09–2	2,3,4	U080	1000 (454)
4,4′-Methylenedianiline	101–77–9	3		10 (4.54)
Methylene diphenyl diisocyanate	101–68–8	3		5000 (2270)
Methyl ethyl ketone	78–93–3	3,4	U159	5000 (2270)
Methyl ethyl ketone peroxide	1338–23–4	4	U160	10 (4.54)
Methyl hydrazine	60–34–4	3,4	P068	10 (4.54)
Methyl iodide	74–88–4	3,4	U138	100 (45.4)
Methyl isobutyl ketone	108–10–1	3,4	U161	5000 (2270)
Methyl isocyanate	624–83–9	3,4	P064	10 (4.54)
2-Methyllactonitrile	75–86–5	1,4	P069	10 (4.54)
Methyl mercaptan	74–93–1	1,4	U153	100 (45.4)
Methyl methacrylate	80–62–6	1,3,4	U162	1000 (454)
Methyl parathion	298–00–0	1,4	P071	100 (45.4)
4-Methyl-2-pentanone	108–10–1	3,4	U161	5000 (2270)
Methyl tert-butyl ether	1634–04–4	3		1000 (454)
Methylthiouracil	56–04–2	4	U164	10 (4.54)
Mevinphos	7786–34–7	1		10 (4.54)
Mexacarbate	315–18–4	1,4	P128	1000 (454)
Mitomycin C	50–07–7	4	U010	10 (4.54)
MNNG	70–25–7	4	U163	10 (4.54)
Monoethylamine	75–04–7	1		100 (45.4)
Monomethylamine	74–89–5	1		100 (45.4)
Naled	300–76–5	1		10 (4.54)
5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-.	20830–81–3	4	U059	10 (4.54)
1-Naphthalenamine	134–32–7	4	U167	100 (45.4)
2-Naphthalenamine	91–59–8	4	U168	10 (4.54)
Naphthalenamine, N,N'-bis(2-chloroethyl)-	494–03–1	4	U026	100 (45.4)
Naphthalene	91–20–3	1,2,3,4	U165	100 (45.4)
Naphthalene, 2-chloro-	91–58–7	2,4	U047	5000 (2270)
1,4-Naphthalenedione	130–15–4	4	U166	5000 (2270)
2,7-Naphthalenedisulfonic acid, 3,3‡-[(3,3‡-dimethyl-(1,1‡-biphenyl)-4,4‡-diyl)-bis(azo)]bis(5-amino-4-hydroxy)-tetrasodium salt.	72–57–1	4	U236	10 (4.54)
1-Naphthalenol, methylcarbamate	63–25–2	1,3,4	U279	100 (45.4)
Naphthenic acid	1338–24–5	1		100 (45.4)
1,4-Naphthoquinone	130–15–4	4	U166	5000 (2270)
alpha-Naphthylamine	134–32–7	4	U167	100 (45.4)
beta-Naphthylamine	91–59–8	4	U168	10 (4.54)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
alpha-Naphthylthiourea	86–88–4	4	P072	100 (45.4)
Nickel‡‡	7440–02–0	2		100 (45.4)
Nickel ammonium sulfate	15699–18–0	1		100 (45.4)
NICKEL AND COMPOUNDS	N.A.	2,3		**
Nickel carbonyl Ni(CO)4, (T-4)-	13463–39–3	4	P073	10 (4.54)
Nickel chloride	7718–54–9	1		100 (45.4)
	37211–05–5			
Nickel compounds	N.A.	2,3		**
Nickel cyanide Ni(CN)2	557–19–7	4	P074	10 (4.54)
Nickel hydroxide	12054–48–7	1		10 (4.54)
Nickel nitrate	14216–75–2	1		100 (45.4)
Nickel sulfate	7786–81–4	1		100 (45.4)
Nicotine, & salts	54–11–5	4	P075	100 (45.4)
Nitric acid	7697–37–2	1		1000 (454)
Nitric acid, thallium (1+) salt	10102–45–1	4	U217	100 (45.4)
Nitric oxide	10102–43–9	4	P076	10 (4.54)
p-Nitroaniline	100–01–6	4	P077	5000 (2270)
Nitrobenzene	98–95–3	1,2,3,4	U169	1000 (454)
4-Nitrobiphenyl	92–93–3	3		10 (4.54)
Nitrogen dioxide	10102–44–0	1,4	P078	10 (4.54)
	10544–72–6			
Nitrogen oxide NO	10102–43–9	4	P076	10 (4.54)
Nitrogen oxide NO2	10102–44–0	1,4	P078	10 (4.54)
	10544–72–6			
Nitroglycerine	55–63–0	4	P081	10 (4.54)
Nitrophenol (mixed)	25154–55–6	1		100 (45.4)
m-Nitrophenol	554–84–7	.....		.....
o-Nitrophenol	88–75–5	1,2		100 (45.4)
p-Nitrophenol	100–02–7	1,2,3,4	U170	100 (45.4)
2-Nitrophenol	88–75–5	1,2		100 (45.4)
4-Nitrophenol	100–02–7	1,2,3,4	U170	100 (45.4)
NITROPHENOLS	N.A.	2		**
2-Nitropropane	79–46–9	3,4	U171	10 (4.54)
NITROSAMINES	N.A.	2		**
N-Nitrosodi-n-butylamine	924–16–3	4	U172	10 (4.54)
N-Nitrosodiethanolamine	1116–54–7	4	U173	1 (0.454)
N-Nitrosodiethylamine	55–18–5	4	U174	1 (0.454)
N-Nitrosodimethylamine	62–75–9	2,3,4	P082	10 (4.54)
N-Nitrosodiphenylamine	86–30–6	2		100 (45.4)
N-Nitroso-N-ethylurea	759–73–9	4	U176	1 (0.454)
N-Nitroso-N-methylurea	684–93–5	3,4	U177	1 (0.454)
N-Nitroso-N-methylurethane	615–53–2	4	U178	1 (0.454)
N-Nitrosomethylvinylamine	4549–40–0	4	P084	10 (4.54)
N-Nitrosomorpholine	59–89–2	3		1 (0.454)
N-Nitrosopiperidine	100–75–4	4	U179	10 (4.54)
N-Nitrosopyrrolidine	930–55–2	4	U180	1 (0.454)
Nitrotoluene	1321–12–6	1		1000 (454)
m-Nitrotoluene	99–08–1	.....		.....
o-Nitrotoluene	88–72–2	.....		.....
p-Nitrotoluene	99–99–0	.....		.....
5-Nitro-o-toluidine	99–55–8	4	U181	100 (45.4)
Octamethylpyrophosphoramide	152–16–9	4	P085	100 (45.4)
Osmium oxide OsO4, (T–4)–	20816–12–0	4	P087	1000 (454)
Osmium tetroxide	20816–12–0	4	P087	1000 (454)
7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	145–73–3	4	P088	1000 (454)
1,2-Oxathiolane, 2,2-dioxide	1120–71–4	3,4	U193	10 (4.54)
2H-1,3,2-Oxazaphosphorin-2–amine, N,N- bis(2-chloroethyl)tetrahydro-, 2-oxide	50–18–0	4	U058	10 (4.54)
Oxirane	75–21–8	3,4	U115	10 (4.54)
Oxiranecarboxyaldehyde	765–34–4	4	U126	10 (4.54)
Oxirane, (chloromethyl)-	106–89–8	1,3,4	U041	100 (45.4)
Paraformaldehyde	30525–89–4	1		1000 (454)
Paraldehyde	123–63–7	4	U182	1000 (454)
Parathion	56–38–2	1,3,4	P089	10 (4.54)
PCBs	1336–36–3	1,2,3		1 (0.454)
PCNB	82–68–8	3,4	U185	100 (45.4)
Pentachlorobenzene	608–93–5	4	U183	10 (4.54)
Pentachloroethane	76–01–7	4	U184	10 (4.54)
Pentachloronitrobenzene	82–68–8	3,4	U185	100 (45.4)
Pentachlorophenol	87–86–5	1,2,3,4	See F027	10 (4.54)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
1,3-Pentadiene	504–60–9	4	U186	100 (45.4)
Perchloroethylene	127–18–4	2,3,4	U210	100 (45.4)
Phenacetin	62–44–2	4	U187	100 (45.4)
Phenanthrene	85–01–8	2		5000 (2270)
Phenol	108–95–2	1,2,3,4	U188	1000 (454)
Phenol, 2-chloro-	95–57–8	2,4	U048	100 (45.4)
Phenol, 4-chloro-3-methyl-	59–50–7	2,4	U039	5000 (2270)
Phenol, 2-cyclohexyl-4,6-dinitro-	131–89–5	4	P034	100 (45.4)
Phenol, 2,4-dichloro-	120–83–2	2,4	U081	100 (45.4)
Phenol, 2,6-dichloro-	87–65–0	4	U082	100 (45.4)
Phenol, 4,4′-(1,2-diethyl-1,2-ethenediyl)bis-, (E)	56–53–1	4	U089	1 (0.454)
Phenol, 2,4-dimethyl-	105–67–9	2,4	U101	100 (45.4)
Phenol, 4-(dimethylamino)-3,5-dimethyl-, 4 methylcarbamate (ester)	315–18–4	1,4	P128	1000 (454)
Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate	2032–65–7	1,4	P199	10 (4.54)
Phenol, 2,4-dinitro-	51–28–5	1,2,3,4	P048	10 (4.54)
Phenol, methyl-	1319–77–3	1,3,4	U052	100 (45.4)
Phenol, 2-methyl-4,6-dinitro-, & salts	534–52–1	2,3,4	P047	10 (4.54)
Phenol, 2,2′-methylenebis[3,4,6- trichloro-	70–30–4	4	U132	100 (45.4)
Phenol, 2-(1-methylethoxy)-, methylcarbamate	114–26–1	3,4	U411	100 (45.4)
Phenol, 3-(1-methylethyl)-, methyl carbamate (m-Cumenyl methylcarbamate)	64–00–6	4	P202	##
Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate (Promecarb)	2631-37–0	4	P201	##
Phenol, 2-(1-methylpropyl)-4,6-dinitro-	88–85–7	4	P020	1000 (454)
Phenol, 4-nitro-	100–02–7	1,2,3,4	U170	100 (45.4)
Phenol, pentachloro-	87–86–5	1,2,3,4	See F027	10 (4.54)
Phenol, 2,3,4,6-tetrachloro-	58–90–2	4	See F027	10 (4.54)
Phenol, 2,4,5-trichloro-	95–95–4	1,3,4	See F027	10 (4.54)
Phenol, 2,4,6-trichloro-	88–06–2	1,2,3,4	See F027	10 (4.54)
Phenol, 2,4,6-trinitro-, ammonium salt	131–74–8	4	P009	10 (4.54)
L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-	148–82–3	4	U150	1 (0.454)
p-Phenylenediamine	106–50–3	3		5000 (2270)
Phenylmercury acetate	62–38–4	4	P092	100 (45.4)
Phenylthiourea	103–85–5	4	P093	100 (45.4)
Phorate	298–02–2	4	P094	10 (4.54)
Phosgene	75–44–5	1,3,4	P095	10 (4.54)
Phosphine	7803–51–2	3,4	P096	100 (45.4)
Phosphoric acid	7664–38–2	1		5000 (2270)
Phosphoric acid, diethyl 4-nitrophenyl ester	311–45–5	4	P041	100 (45.4)
Phosphoric acid, lead(2+) salt (2:3)	7446–27–7	4	U145	10 (4.54)
Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester	298–04–4	1,4	P039	1 (0.454)
Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester	298–02–2	4	P094	10 (4.54)
Phosphorodithioic acid, O,O-diethyl S-methyl ester	3288-58–2	4	U087	5000 (2270)
Phosphorodithioic acid, O,O-dimethyl S-[2(methylamino)-2-oxoethyl] ester	60–51–5	4	P044	10 (4.54)
Phosphorofluoridic acid, bis(1-methylethyl) ester	55–91–4	4	P043	100 (45.4)
Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester	56–38–2	1,3,4	P089	10 (4.54)
Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	297–97–2	4	P040	100 (45.4)
Phosphorothioic acid, O-[4-[(dimethylamino) sulfonyl]phenyl] O,O-dimethyl ester	52–85–7	4	P097	1000 (454)
Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester	298–00–0	1,4	P071	100 (45.4)
Phosphorus	7723–14–0	1,3		1 (0.454)
Phosphorus oxychloride	10025–87–3	1		1000 (454)
Phosphorus pentasulfide	1314–80–3	1,4	U189	100 (45.4)
Phosphorus sulfide	1314–80–3	1,4	U189	100 (45.4)
Phosphorus trichloride	7719–12–2	1		1000 (454)
PHTHALATE ESTERS	N.A.	2		**
Phthalic anhydride	85–44–9	3,4	U190	5000 (2270)
2-Picoline	109–06–8	4	U191	5000 (2270)
Piperidine, 1-nitroso-	100–75–4	4	U179	10 (4.54)
Plumbane, tetraethyl-	78–00–2	1,4	P110	10 (4.54)
POLYCHLORINATED BIPHENYLS	1336–36–3	1,2,3		1 (0.454)
Polycyclic Organic Matter[e]	N.A.	3		**
POLYNUCLEAR AROMATIC HYDROCARBONS	N.A.	2		**
Potassium arsenate	7784–41–0	1		1 (0.454)
Potassium arsenite	10124–50–2	1		1 (0.454)
Potassium bichromate	7778–50–9	1		10 (4.54)
Potassium chromate	7789–00–6	1		10 (4.54)
Potassium cyanide K(CN)	151–50–8	1,4	P098	10 (4.54)
Potassium hydroxide	1310–58–3	1		1000 (454)
Potassium permanganate	7722–64–7	1		100 (45.4)
Potassium silver cyanide	506–61–6	4	P099	1 (0.454)
Pronamide	23950–58–5	4	U192	5000 (2270)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime (Aldicarb sulfone).	1646–88–4	4	P203	##
Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime	116–06–3	4	P070	1 (0.454)
1-Propanamine	107–10–8	4	U194	5000 (2270)
1-Propanamine, N-propyl-	142–84–7	4	U110	5000 (2270)
1-Propanamine, N-nitroso-N-propyl-	621–64–7	2,4	U111	10 (4.54)
Propane, 1,2-dibromo-3-chloro-	96–12–8	3,4	U066	1 (0.454)
Propane, 1,2-dichloro-	78–87–5	1,2,3,4	U083	1000 (454)
Propanedinitrile	109–77–3	4	U149	1000 (454)
Propanenitrile	107–12–0	4	P101	10 (4.54)
Propanenitrile, 3-chloro-	542–76–7	4	P027	1000 (454)
Propanenitrile, 2-hydroxy-2-methyl-	75–86–5	1,4	P069	10 (4.54)
Propane, 2-nitro-	79–46–9	3,4	U171	10 (4.54)
Propane, 2,2'-oxybis[2-chloro-	108–60–1	2,4	U027	1000 (454)
1,3-Propane sultone	1120–71–4	3,4	U193	10 (4.54)
1,2,3-Propanetriol, trinitrate	55–63–0	4	P081	10 (4.54)
Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	93–72–1	1,4	See F027	100 (45.4)
1-Propanol, 2,3-dibromo-, phosphate (3:1)	126–72–7	4	U235	10 (4.54)
1-Propanol, 2-methyl-	78–83–1	4	U140	5000 (2270)
2-Propanone	67–64–1	4	U002	5000 (2270)
2-Propanone, 1-bromo-	598–31–2	4	P017	1000 (454)
Propargite	2312–35–8	1		10 (4.54)
Propargyl alcohol	107–19–7	4	P102	1000 (454)
2-Propenal	107–02–8	1,2,3,4	P003	1 (0.454)
2-Propenamide	79–06–1	3,4	U007	5000 (2270)
1-Propene, 1,3-dichloro-	542–75–6	1,2,3,4	U084	100 (45.4)
1-Propene, 1,1,2,3,3,3-hexachloro-	1888–71–7	4	U243	1000 (454)
2-Propenenitrile	107–13–1	1,2,3,4	U009	100 (45.4)
2-Propenenitrile, 2-methyl-	126–98–7	4	U152	1000 (454)
2-Propenoic acid	79–10–7	3,4	U008	5000 (2270)
2-Propenoic acid, ethyl ester	140–88–5	3,4	U113	1000 (454)
2-Propenoic acid, 2-methyl-, ethyl ester	97–63–2	4	U118	1000 (454)
2-Propenoic acid, 2-methyl-, methyl ester	80–62–6	1,3,4	U162	1000 (454)
2-Propen-1-ol	107–18–6	1,4	P005	100 (45.4)
beta-Propiolactone	57–57–8	3		10 (4.54)
Propionaldehyde	123–38–6	3	1000 (454)	
Propionic acid	79–09–4	1		5000 (2270)
Propionic anhydride	123–62–6	1		5000 (2270)
Propoxur (Baygon)	114–26–1	3,4	U411	100 (45.4)
n-Propylamine	107–10–8	4	U194	5000 (2270)
Propylene dichloride	78–87–5	1,2,3,4	U083	1000 (454)
Propylene oxide	75–56–9	1,3		100 (45.4)
1,2-Propylenimine	75–55–8	3,4	P067	1 (0.454)
2-Propyn-1-ol	107–19–7	4	P102	1000 (454)
Pyrene	129–00–0	2		5000 (2270)
Pyrethrins	121–29–9 121–21–1 8003–34–7	1		1 (0.454)
3,6-Pyridazinedione, 1,2-dihydro-	123–33–1	4	U148	5000 (2270)
4-Pyridinamine	504–24–5	4	P008	1000 (454)
Pyridine	110–86–1	4	U196	1000 (454)
Pyridine, 2-methyl-	109–06–8	4	U191	5000 (2270)
Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, & salts	54–11–5	4	P075	100 (45.4)
2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2- chloroethyl)amino]-	66–75–1	4	U237	10 (4.54)
4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	56–04–2	4	U164	10 (4.54)
Pyrrolidine, 1-nitroso-	930–55–2	4	U180	1 (0.454)
Pyrrolo[2,3-b] indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-(Physostigmine).	57–47–6	4	P204	##
Quinoline	91–22–5	1,3		5000 (2270)
Quinone	106–51–4	3,4	U197	10 (4.54)
Quintobenzene	82–68–8	3,4	U185	100 (45.4)
Radionuclides (including radon)	N.A.	3		§
Reserpine	50–55–5	4	U200	5000 (2270)
Resorcinol	108–46–3	1,4	U201	5000 (2270)
Saccharin, & salts	81–07–2	4	U202	100 (45.4)
Safrole	94–59–7	4	U203	100 (45.4)
Selenious acid	7783–00–8	4	U204	10 (4.54)
Selenious acid, dithallium (1+) salt	12039–52–0	4	P114	1000 (454)
Selenium††	7782–49–2	2		100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
SELENIUM AND COMPOUNDS	N.A.	2,3		**
Selenium Compounds	N.A.	2,3		**
Selenium dioxide	7446–08–4	1,4	U204	10 (4.54)
Selenium oxide	7446–08–4	1,4	U204	10 (4.54)
Selenium sulfide SeS2	7488–56–4	4	U205	10 (4.54)
Selenourea	630–10–4	4	P103	1000 (454)
L-Serine, diazoacetate (ester)	115–02–6	4	U015	1 (0.454)
Silver ††	7440–22–4	2		1000 (454)
SILVER AND COMPOUNDS	N.A.	2		**
Silver cyanide Ag(CN)	506–64–9	4	P104	1 (0.454)
Silver nitrate	7761–88–8	1		1 (0.454)
Silvex (2,4,5-TP)	93–72–1	1,4	See F027	100 (45.4)
Sodium	7440–23–5	1		10 (4.54)
Sodium arsenate	7631–89–2	1		1 (0.454)
Sodium arsenite	7784–46–5	1		1 (0.454)
Sodium azide	26628–22–8	4	P105	1000 (454)
Sodium bichromate	10588–01–9	1		10 (4.54)
Sodium bifluoride	1333–83–1	1		100 (45.4)
Sodium bisulfite	7631–90–5	1		5000 (2270)
Sodium chromate	7775–11–3	1		10 (4.54)
Sodium cyanide Na(CN)	143–33–9	1,4	P106	10 (4.54)
Sodium dodecylbenzenesulfonate	25155–30–0	1		1000 (454)
Sodium fluoride	7681–49–4	1		1000 (454)
Sodium hydrosulfide	16721–80–5	1		5000 (2270)
Sodium hydroxide	1310–73–2	1		1000 (454)
Sodium hypochlorite	7681–52–9	1		100 (45.4)
	10022–70–5			
Sodium methylate	124–41–4	1		1000 (454)
Sodium nitrite	7632–00–0	1		100 (45.4)
Sodium phosphate, dibasic	7558–79–4	1		5000 (2270)
	10039–32–4			
	10140–65–5			
Sodium phosphate, tribasic	7601–54–9	1		5000 (2270)
	7758–29–4			
	7785–84–4			
	10101–89–0			
	10124–56–8			
	10361–89–4			
Sodium selenite	7782–82–3	1		100 (45.4)
	10102–18–8			
Streptozotocin	18883–66–4	4	U206	1 (0.454)
Strontium chromate	7789–06–2	1		10 (4.54)
Strychnidin-10-one, & salts	57–24–9	1,4	P108	10 (4.54)
Strychnidin-10-one, 2,3-dimethoxy-	357–57–3	4	P018	100 (45.4)
Strychnine, & salts	57–24–9	1,4	P108	10 (4.54)
Styrene	100–42–5	1,3		1000 (454)
Styrene oxide	96–09–3	3		100 (45.4)
Sulfuric acid	7664–93–9	1		1000 (454)
	8014–95–7			
Sulfuric acid, dimethyl ester	77–78–1	3,4	U103	100 (45.4)
Sulfuric acid, dithallium (1+) salt	7446–18–6	1,4	P115	100 (45.4)
	10031–59–1			
Sulfur monochloride	12771–08–3	1		1000 (454)
Sulfur phosphide	1314–80–3	1,4	U189	100 (45.4)
2,4,5-T	93–76–5	1,4	See F027	1000 (454)
2,4,5-T acid	93–76–5	1,4	See F027	1000 (454)
2,4,5-T amines	2008–46–0	1		5000 (2270)
	1319–72–8			
	3813–14–7			
	6369–96–6			
	6369–97–7			
2,4,5-T esters	93–79–8	1		1000 (454)
	1928–47–8			
	2545–59–7			
	25168–15–4			
	61792–07–2			
2,4,5-T salts	13560–99–1	1		1000 (454)
TCDD	1746–01–6	2,3		1 (0.454)
TDE	72–54–8	1,2,4	U060	1 (0.454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
1,2,4,5-Tetrachlorobenzene	95–94–3	4	U207	5000 (2270)
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746–01–6	2,3		1 (0.454)
1,1,1,2-Tetrachloroethane	630–20–6	4	U208	100 (45.4)
1,1,2,2-Tetrachloroethane	79–34–5	2,3,4	U209	100 (45.4)
Tetrachloroethylene	127–18–4	2,3,4	U210	100 (45.4)
2,3,4,6-Tetrachlorophenol	58–90–2	4	See F027	10 (4.54)
Tetraethyl pyrophosphate	107–49–3	1,4	P111	10 (4.54)
Tetraethyl lead	78–00–2	1,4	P110	10 (4.54)
Tetraethyldithiopyrophosphate	3689–24–5	4	P109	100 (45.4)
Tetrahydrofuran	109–99–9	4	U213	1000 (454)
Tetranitromethane	509–14–8	4	P112	10 (4.54)
Tetraphosphoric acid, hexaethyl ester	757–58–4	4	P062	100 (45.4)
Thallic oxide	1314–32–5	4	P113	100 (45.4)
Thallium ††	7440–28–0	2		1000 (454)
THALLIUM AND COMPOUNDS	N.A.	2		**
Thallium (I) acetate	563–68–8	4	U214	100 (45.4)
Thallium (I) carbonate	6533–73–9	4	U215	100 (45.4)
Thallium chloride TlCl	7791–12–0	4	U216	100 (45.4)
Thallium (I) nitrate	10102–45–1	4	U217	100 (45.4)
Thallium oxide Tl2O3	1314–32–5	4	P113	100 (45.4)
Thallium (I) selenite	12039–52–0	4	P114	1000 (454)
Thallium (I) sulfate	7446–18–6 10031–59–1	1,4	P115	100 (45.4)
Thioacetamide	62–55–5	4	U218	10 (4.54)
Thiodiphosphoric acid, tetraethyl ester	3689–24–5	4	P109	100 (45.4)
Thiofanox	39196–18–4	4	P045	100 (45.4)
Thioimidodicarbonic diamide [(H2N)C(S)] 2NH	541–53–7	4	P049	100 (45.4)
Thiomethanol	74–93–1	1,4	U153	100 (45.4)
Thioperoxydicarbonic diamide [(H2N)C(S)] 2S2, tetramethyl-	137–26–8	4	U244	10 (4.54)
Thiophenol	108–98–5	4	P014	100 (45.4)
Thiosemicarbazide	79–19–6	4	P116	100 (45.4)
Thiourea	62–56–6	4	U219	10 (4.54)
Thiourea, (2-chlorophenyl)-	5344–82–1	4	P026	100 (45.4)
Thiourea, 1-naphthalenyl-	86–88–4	4	P072	100 (45.4)
Thiourea, phenyl-	103–85–5	4	P093	100 (45.4)
Thiram	137–26–8	4	U244	10 (4.54)
Titanium tetrachloride	7550–45–0	3		1,2,41000 (454)
Toluene	108–88–3	1,2,3,4	U220	1000 (454)
Toluenediamine	95–80–7 496–72–0 823–40–5 25376–45–8	3,4	U221	10 (4.54)
2,4-Toluene diamine	95–80–7 496–72–0 823–40–5 25376–45–8	3,4	U221	10 (4.54)
Toluene diisocyanate	91–08–7 584–84–9 26471–62–5	3,4	U223	100 (45.4)
2,4-Toluene diisocyanate	91–08–7 584–84–9 26471–62–5	3,4	U223	100 (45.4)
o-Toluidine	95–53–4	3,4	U328	100 (45.4)
p-Toluidine	106–49–0	4	U353	100 (45.4)
o-Toluidine hydrochloride	636–21–5	4	U222	100 (45.4)
Toxaphene	8001–35–2	1,2,3,4	P123	1 (0.454)
2,4,5-TP acid	93–72–1	1,4	See F027	100 (45.4)
2,4,5-TP esters	32534–95–5	1		100 (45.4)
1H-1,2,4-Triazol-3-amine	61–82–5	4	U011	10 (4.54)
Trichlorfon	52–68–6	1		100 (45.4)
1,2,4-Trichlorobenzene	120–82–1	2,3		100 (45.4)
1,1,1-Trichloroethane	71–55–6	2,3,4	U226	1000 (454)
1,1,2-Trichloroethane	79–00–5	2,3,4	U227	100 (45.4)
Trichloroethylene	79–01–6	1,2,3,4	U228	100 (45.4)
Trichloromethanesulfenyl chloride	594–42–3	4	P118	100 (45.4)
Trichloromonofluoromethane	75–69–4	4	U121	5000 (2270)
Trichlorophenol	25167–82–2	1		10 (4.54)
2,3,4-Trichlorophenol	15950–66–0			

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
2,3,5-Trichlorophenol	933–78–8			
2,3,6-Trichlorophenol	933–75–5			
3,4,5-Trichlorophenol	609–19–8			
2,4,5-Trichlorophenol	95–95–4	1,3,4	See F027	10 (4.54)
2,4,6-Trichlorophenol	88–06–2	1,2,3,4	See F027	10 (4.54)
Triethanolamine dodecylbenzenesulfonate	27323–41–7	1		1000 (454)
Triethylamine	121–44–8	1,3,4	U404	5000 (2270)
Trifluralin	1582–09–8	3		10 (4.54)
Trimethylamine	75–50–3	1		100 (45.4)
2,2,4-Trimethylpentane	540–84–1	3		1000 (454)
1,3,5-Trinitrobenzene	99–35–4	4	U234	10 (4.54)
1,3,5-Trioxane, 2,4,6-trimethyl-	123–63–7	4	U182	1000 (454)
Tris(2,3-dibromopropyl) phosphate	126–72–7	4	U235	10 (4.54)
Trypan blue	72–57–1	4	U236	10 (4.54)
Unlisted Hazardous Wastes Characteristic of Corrosivity	N.A.	4	D002	100 (45.4)
Unlisted Hazardous Wastes Characteristic of Ignitability	N.A.	4	D001	100 (45.4)
Unlisted Hazardous Wastes Characteristic of Reactivity	N.A.	4	D003	100 (45.4)
Unlisted Hazardous Wastes Characteristic of Toxicity:				
Arsenic (D004)	N.A.	4	D004	1 (0.454)
Barium (D005)	N.A.	4	D005	1000 (454)
Benzene (D018)	N.A.	1,2,3,4	D018	10 (4.54)
Cadmium (D006)	N.A.	4	D006	10 (4.54)
Carbon tetrachloride (D019)	N.A.	1,2,4	D019	10 (4.54)
Chlordane (D020)	N.A.	1,2,4	D020	1 (0.454)
Chlorobenzene (D021)	N.A.	1,2,4	D021	100 (45.4)
Chloroform (D022)	N.A.	1,2,4	D022	10 (4.54)
Chromium (D007)	N.A.	4	D007	10 (4.54)
o-Cresol (D023)	N.A.	4	D023	100 (45.4)
m-Cresol (D024)	N.A.	4	D024	100 (45.4)
p-Cresol (D025)	N.A.	4	D025	100 (45.4)
Cresol (D026)	N.A.	4	D026	100 (45.4)
2,4-D (D016)	N.A.	1,4	D016	100 (45.4)
1,4-Dichlorobenzene (D027)	N.A.	1,2,4	D027	100 (45.4)
1,2-Dichloroethane (D028)	N.A.	1,2,4	D028	100 (45.4)
1,1-Dichloroethylene (D029)	N.A.	1,2,4	D029	100 (45.4)
2,4-Dinitrotoluene (D030)	N.A.	1,2,4	D030	10 (4.54)
Endrin (D012)	N.A.	1,4	D012	1 (0.454)
Heptachlor (and epoxide) (D031)	N.A.	1,2,4	D031	1 (0.454)
Hexachlorobenzene (D032)	N.A.	2,4	D032	10 (4.54)
Hexachlorobutadiene (D033)	N.A.	2,4	D033	1 (0.454)
Hexachloroethane (D034)	N.A.	2,4	D034	100 (45.4)
Lead (D008)	N.A.	4	D008	10 (4.54)
Lindane (D013)	N.A.	1,4	D013	1 (0.454)
Mercury (D009)	N.A.	4	D009	1 (0.454)
Methoxychlor (D014)	N.A.	1,4	D014	1 (0.454)
Methyl ethyl ketone (D035)	N.A.	4	D035	5000 (2270)
Nitrobenzene (D036)	N.A.	1,2,4	D036	1000 (454)
Pentachlorophenol (D037)	N.A.	1,2,4	D037	10 (4.54)
Pyridine (D038)	N.A.	4	D038	1000 (454)
Selenium (D010)	N.A.	4	D010	10 (4.54)
Silver (D011)	N.A.	4	D011	1 (0.454)
Tetrachloroethylene (D039)	N.A.	2,4	D039	100 (45.4)
Toxaphene (D015)	N.A.	1,4	D015	1 (0.454)
Trichloroethylene (D040)	N.A.	1,2,4	D040	100 (45.4)
2,4,5-Trichlorophenol (D041)	N.A.	1,4	D041	10 (4.54)
2,4,6-Trichlorophenol (D042)	N.A.	1,2,4	D042	10 (4.54)
2,4,5-TP (D017)	N.A.	1,4	D017	100 (45.4)
Vinyl chloride (D043)	N.A.	2,3,4	D043	1 (0.454)
Uracil mustard	66–75–1	4	U237	10 (4.54)
Uranyl acetate	541–09–3	1		100 (45.4)
Uranyl nitrate	10102–06–4	1		100 (45.4)
	36478–76–9			
Urea, N-ethyl-N-nitroso-	759–73–9	4	U176	1 (0.454)
Urea, N-methyl-N-nitroso-	684–93–5	3,4	U177	1 (0.454)
Urethane	51–79–6	3,4	U238	100 (45.4)
Vanadic acid, ammonium salt	7803–55–6	4	P119	1000 (454)
Vanadium oxide V2O5	1314–62–1	1,4	P120	1000 (454)
Vanadium pentoxide	1314–62–1	1,4	P120	1000 (454)
Vanadyl sulfate	27774–13–6	1		1000 (454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Vinyl acetate	108–05–4	1,3		5000 (2270)
Vinyl acetate monomer	108–05–4	1,3		5000 (2270)
Vinylamine, N-methyl-N-nitroso-	4549–40–0	4	P084	10 (4.54)
Vinyl bromide	593–60–2	3		100 (45.4)
Vinyl chloride	75–01–4	2,3,4	U043	1 (0.454)
Vinylidene chloride	75–35–4	1,2,3,4	U078	100 (45.4)
Warfarin, & salts	81–81–2	4	P001, U248	100 (45.4)
Xylene	1330–20–7	1,3,4	U239	100 (45.4)
m-Xylene	108–38–3	3		1000 (454)
o-Xylene	95–47–6	3		1000 (454)
p-Xylene	106–42–3	3		100 (45.4)
Xylene (mixed)	1330–20–7	1,3,4	U239	100 (45.4)
Xylenes (isomers and mixture)	1330–20–7	1,3,4	U239	100 (45.4)
Xylenol	1300–71–6	1		1000 (454)
Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester (3beta,16beta,17alpha, 18beta,20alpha).	50–55–54	4	U200	5000 (2270)
Zinc ††	7440–66–6	2		1000 (454)
ZINC AND COMPOUNDS	N.A.	2		**
Zinc acetate	557–34–6	1		1000 (454)
Zinc ammonium chloride	52628–25–8 14639–97–5 14639–98–6	1		1000 (454)
Zinc, bis(dimethylcarbamodithioato-S,S')-, (Ziram)	137–30–4	4	P205	##
Zinc borate	1332–07–6	1		1000 (454)
Zinc bromide	7699–45–8	1		1000 (454)
Zinc carbonate	3486–35–9	1		1000 (454)
Zinc chloride	7646–85–7	1		1000 (454)
Zinc cyanide Zn(CN)2	557–21–1	1,4	P121	10 (4.54)
Zinc fluoride	7783–49–5	1		1000 (454)
Zinc formate	557–41–5	1		1000 (454)
Zinc hydrosulfite	7779–86–4	1		1000 (454)
Zinc nitrate	7779–88–6	1		1000 (454)
Zinc phenolsulfonate	127–82–2	1		5000 (2270)
Zinc phosphide Zn3P2	1314–84–7	1,4	P122, U249	100 (45.4)
Zinc silicofluoride	16871–71–9	1		5000 (2270)
Zinc sulfate	7733–02–0	1		1000 (454)
Zirconium nitrate	13746–89–9	1		5000 (2270)
Zirconium potassium fluoride	16923–95–8	1		1000 (454)
Zirconium sulfate	14644–61–2	1		5000 (2270)
Zirconium tetrachloride	10026–11–6	1		5000 (2270)
F001	.....	4	F001	10 (4.54)
The following spent halogenated solvents used in degreasing; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the halogenated solvents listed below or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.				
(a) Tetrachloroethylene	127–18–4	2,3,4	U210	100 (45.4)
(b) Trichloroethylene	79–01–6	1,2,3,4	U228	100 (45.4)
(c) Methylene chloride	75–09–2	2,3,4	U080	1000 (454)
(d) 1,1,1-Trichloroethane	71–55–6	2,3,4	U226	1000 (454)
(e) Carbon tetrachloride	56–23–5	1,2,3,4	U211	10 (4.54)
(f) Chlorinated fluorocarbons	N.A.	.....		5000 (2270)
F002	.....	4	F002	10 (4.54)
The following spent halogenated solvents; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the halogenated solvents listed below or those solvents listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.				
(a) Tetrachloroethylene	127–18–4	2,3,4	U210	100 (45.4)
(b) Methylene chloride	75–09–2	2,3,4	U080	1000 (454)
(c) Trichloroethylene	79–01–6	1,2,3,4	U228	100 (45.4)
(d) 1,1,1-Trichloroethane	71–55–6	2,3,4	U226	1000 (454)
(e) Chlorobenzene	108–90–7	1,2,3,4	U037	100 (45.4)
(f) 1,1,2-Trichloro-1,2,2-trifluoroethane	76–13–1	.....		5000 (2270)
(g) o-Dichlorobenzene	95–50–1	1,2,4	U070	100 (45.4)
(h) Trichlorofluoromethane	75–69–4	4	U121	5000 (2270)
(i) 1,1,2-Trichloroethane	79–00–5	2,3,4	U227	100 (45.4)
F003	.....	4	F003	100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents.				
(a) Xylene	1330-20–7			1000 (454)
(b) Acetone	67–64–1			5000 (2270)
(c) Ethyl acetate	141–78–6			5000 (2270)
(d) Ethylbenzene	100–41–4			1000 (454)
(e) Ethyl ether	60–29–7			100 (45.4)
(f) Methyl isobutyl ketone	108–10–1			5000 (2270)
(g) n-Butyl alcohol	71–36–3			5000 (2270)
(h) Cyclohexanone	108–94–1			5000 (2270)
(i) Methanol	67–56–1			5000 (2270)
F004		4	F004	100 (45.4)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:				
(a) Cresols/Cresylic acid	1319–77–3	1,3,4	U052	100 (45.4)
(b) Nitrobenzene	98–95–3	1,2,3,4	U169	1000 (454)
F005		4	F005	100 (45.4)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:				
(a) Toluene	108–88–3	1,2,3,4	U220	1000 (454)
(b) Methyl ethyl ketone	78–93–3	3,4	U159	5000 (2270)
(c) Carbon disulfide	75–15–0	1,3,4	P022	100 (45.4)
(d) Isobutanol	78–83–1	4	U140	5000 (2270)
(e) Pyridine	110–86–1	4	U196	1000 (454)
F006		4	F006	10 (4.54)
Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum, (2) tin plating on carbon steel, (3) zinc plating (segregated basis) on carbon steel, (4) aluminum or zinc-aluminum plating on carbon steel, (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel, and (6) chemical etching and milling of aluminum.				
F007		4	F007	10 (4.54)
Spent cyanide plating bath solutions from electroplating operations.				
F008		4	F008	10 (4.54)
Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.				
F009		4	F009	10 (4.54)
Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.				
F010		4	F010	10 (4.54)
Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.				
F011		4	F011	10 (4.54)
Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.				
F012		4	F012	10 (4.54)
Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.				
F019		4	F019	10 (4.54)
Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.				
F020		4	F020	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of hexachlorophene from highly purified 2,4,5-trichlorophenol.)				
F021		4	F021	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol or of intermediates used to produce its derivatives.				
F022		4	F022	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.				

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
F023		4	F023	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or a component in a formulating process) of tri- and tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of hexachlorophene from highly purified 2,4,5-trichlorophenol.)				
F024		4	F024	1 (0.454)
Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in 40 CFR 261.31 or 261.32.)				
F025		4	F025	1 (0.454)
Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution.				
F026		4	F026	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.				
F027		4	F027	1 (0.454)
Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5- trichlorophenol as the sole component.)				
F028		4	F028	1 (0.454)
Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.				
F032		4	F032	1 (0.454)
Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with § 261.35 of this chapter or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034 or F035), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.				
F034		4	F034	1 (0.454)
Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.				
F035		4	F035	1 (0.454)
Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.				
F037		4	F037	1 (0.454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Petroleum refinery primary oil/water/solids separation sludge-Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under § 261.4(a)(12)(i), if those residuals are to be disposed of.				
F038	.....	4	F038	1 (0.454)
Petroleum refinery secondary (emulsified) oil/water/solids separation sludge-Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing.				
F039	.....	4	F039	1 (0.454)
Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under subpart D of 40 CFR part 261. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other hazardous wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.)				
K001	.....	4	K001	1 (0.454)
Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.				
K002	.....	4	K002	10 (4.54)
Wastewater treatment sludge from the production of chrome yellow and orange pigments.				
K003	.....	4	K003	10 (4.54)
Wastewater treatment sludge from the production of molybdate orange pigments.				
K004	.....	4	K004	10 (4.54)
Wastewater treatment sludge from the production of zinc yellow pigments.				
K005	.....	4	K005	10 (4.54)
Wastewater treatment sludge from the production of chrome green pigments.				
K006	.....	4	K006	10 (4.54)
Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).				
K007	.....	4	K007	10 (4.54)
Wastewater treatment sludge from the production of iron blue pigments.				
K008	.....	4	K008	10 (4.54)
Oven residue from the production of chrome oxide green pigments.				
K009	.....	4	K009	10 (4.54)
Distillation bottoms from the production of acetaldehyde from ethylene.				
K010	.....	4	K010	10 (4.54)
Distillation side cuts from the production of acetaldehyde from ethylene.				
K011	.....	4	K011	10 (4.54)
Bottom stream from the wastewater stripper in the production of acrylonitrile.				
K013	.....	4	K013	10 (4.54)
Bottom stream from the acetonitrile column in the production of acrylonitrile.				
K014	.....	4	K014	5000 (2270)
Bottoms from the acetonitrile purification column in the production of acrylonitrile.				
K015	.....	4	K015	10 (4.54)
Still bottoms from the distillation of benzyl chloride.				

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
K016		4	K016	1 (0.454)
Heavy ends or distillation residues from the production of carbon tetrachloride.				
K017		4	K017	10 (4.54)
Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.				
K018		4	K018	1 (0.454)
Heavy ends from the fractionation column in ethyl chloride production.				
K019		4	K019	1 (0.454)
Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.				
K020		4	K020	1 (0.454)
Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.				
K021		4	K021	10 (4.54)
Aqueous spent antimony catalyst waste from fluoromethanes production.				
K022		4	K022	1 (0.454)
Distillation bottom tars from the production of phenol/acetone from cumene.				
K023		4	K023	5000 (2270)
Distillation light ends from the production of phthalic anhydride from naphthalene.				
K024		4	K024	5000 (2270)
Distillation bottoms from the production of phthalic anhydride from naphthalene.				
K025		4	K025	10 (4.54)
Distillation bottoms from the production of nitrobenzene by the nitration of benzene.				
K026		4	K026	1000 (454)
Stripping still tails from the production of methyl ethyl pyridines.				
K027		4	K027	10 (4.54)
Centrifuge and distillation residues from toluene diisocyanate production.				
K028		4	K028	1 (0.454)
Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.				
K029		4	K029	1 (0.454)
Waste from the product steam stripper in the production of 1,1,1- trichloroethane.				
K030		4	K030	1 (0.454)
Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.				
K031		4	K031	1 (0.454)
By-product salts generated in the production of MSMA and cacodylic acid.				
K032		4	K032	10 (4.54)
Wastewater treatment sludge from the production of chlordane.				
K033		4	K033	10 (4.54)
Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.				
K034		4	K034	10 (4.54)
Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.				
K035		4	K035	1 (0.454)
Wastewater treatment sludges generated in the production of creosote.				
K036		4	K036	1 (0.454)
Still bottoms from toluene reclamation distillation in the production of disulfoton.				
K037		4	K037	1 (0.454)
Wastewater treatment sludges from the production of disulfoton.				
K038		4	K038	10 (4.54)
Wastewater from the washing and stripping of phorate production.				
K039		4	K039	10 (4.54)
Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.				
K040		4	K040	10 (4.54)
Wastewater treatment sludge from the production of phorate.				
K041		4	K041	1 (0.454)
Wastewater treatment sludge from the production of toxaphene.				
K042		4	K042	10 (4.54)
Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.				
K043		4	K043	10 (4.54)
2,6-Dichlorophenol waste from the production of 2,4-D.				
K044		4	K044	10 (4.54)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Wastewater treatment sludges from the manufacturing and processing of explosives.				
K045		4	K045	10 (4.54)
Spent carbon from the treatment of wastewater containing explosives.				
K046		4	K046	10 (4.54)
Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.				
K047		4	K047	10 (4.54)
Pink/red water from TNT operations.				
K048		4	K048	10 (4.54)
Dissolved air flotation (DAF) float from the petroleum refining industry.				
K049		4	K049	10 (4.54)
Slop oil emulsion solids from the petroleum refining industry.				
K050		4	K050	10 (4.54)
Heat exchanger bundle cleaning sludge from the petroleum refining industry.				
K051		4	K051	10 (4.54)
API separator sludge from the petroleum refining industry.				
K052		4	K052	10 (4.54)
Tank bottoms (leaded) from the petroleum refining industry.				
K060		4	K060	1 (0.454)
Ammonia still lime sludge from coking operations.				
K061		4	K061	10 (4.54)
Emission control dust/sludge from the primary production of steel in electric furnaces.				
K062		4	K062	10 (4.54)
Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).				
K064		4	K064	10 (4.54)
Acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production.				
K065		4	K065	10 (4.54)
Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities.				
K066		4	K066	10 (4.54)
Sludge from treatment of process wastewater and/or acid plant blowdown from primary zinc production.				
K069		4	K069	10 (4.54)
Emission control dust/sludge from secondary lead smelting. (Note: This listing is stayed administratively for sludge generated from secondary acid scrubber systems. The stay will remain in effect until further administrative action is taken. If EPA takes further action effecting the stay, EPA will publish a notice of the action in the **Federal Register**.)				
K071	.....	4	K071	1 (0.454)
Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.				
K073	.....	4	K073	10 (4.54)
Chlorinated hydrocarbon waste from the purification step of the diaphragm cellprocess using graphite anodes in chlorine production.				
K083	.....	4	K083	100 (45.4)
Distillation bottoms from aniline production.				
K084	.....	4	K084	1 (0.454)
Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.				
K085	.....	4	K085	10 (4.54)
Distillation or fractionation column bottoms from the production of chlorobenzenes.				
K086	.....	4	K086	10 (4.54)
Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.				
K087	.....	4	K087	100 (45.4)
Decanter tank tar sludge from coking operations.				
K088	.....	4	K088	10 (4.54)
Spent potliners from primary aluminum reduction.				
K090	.....	4	K090	10 (4.54)
Emission control dust or sludge from ferrochromiumsilicon production.				
K091	.....	4	K091	10 (4.54)
Emission control dust or sludge from ferrochromium production.				
K093	.....	4	K093	5000 (2270)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Distillation light ends from the production of phthalic anhydride from ortho-xylene.				
K094	.....	4	K094	5000 (2270)
Distillation bottoms from the production of phthalic anhydride from ortho-xylene.				
K095	.....	4	K095	100 (45.4)
Distillation bottoms from the production of 1,1,1-trichloroethane.				
K096	.....	4	K096	100 (45.4)
Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.				
K097	.....	4	K097	1 (0.454)
Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.				
K098	.....	4	K098	1 (0.454)
Untreated process wastewater from the production of toxaphene.				
K099	.....	4	K099	10 (4.54)
Untreated wastewater from the production of 2,4-D.				
K100	.....	4	K100	10 (4.54)
Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.				
K101	.....	4	K101	1 (0.454)
Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.				
K102	.....	4	K102	1 (0.454)
Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.				
K103	.....	4	K103	100 (45.4)
Process residues from aniline extraction from the production of aniline.				
K104	.....	4	K104	10 (4.54)
Combined wastewater streams generated from nitrobenzene/aniline production.				
K105	.....	4	K105	10 (4.54)
Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.				
K106	.....	4	K106	1 (0.454)
Wastewater treatment sludge from the mercury cell process in chlorine production.				
K107	.....	4	K107	10 (4.54)
Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.				
K108	.....	4	K108	10 (4.54)
Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1- dimethylhydrazine (UDMH) from carboxylic acid hydrazides.				
K109	.....	4	K109	10 (4.54)
Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.				
K110	.....	4	K110	10 (4.54)
Condensed column overheads from intermediate separation from the production of 1,1- dimethylhydrazine (UDMH) from carboxylic acid hydrazides.				
K111	.....	4	K111	10 (4.54)
Product washwaters from the production of dinitrotoluene via nitration of toluene.				
K112	.....	4	K112	10 (4.54)
Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.				
K113	.....	4	K113	10 (4.54)
Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.				
K114	.....	4	K114	10 (4.54)
Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.				
K115	.....	4	K115	10 (4.54)
Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.				
K116	.....	4	K116	10 (4.54)
Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.				
K117	.....	4	K117	1 (0.454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.				
K118	.....	4	K118	1 (0.454)
Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.				
K123	.....	4	K123	10 (4.54)
Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.				
K124	.....	4	K124	10 (4.54)
Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.				
K125	.....	4	K125	10 (4.54)
Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.				
K126	.....	4	K126	10 (4.54)
Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.				
K131	.....	4	K131	100 (45.4)
Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.				
K132	.....	4	K132	1000 (454)
Spent absorbent and wastewater separator solids from the production of methyl bromide.				
K136	.....	4	K136	1 (0.454)
Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.				
K141	.....	4	K141	1 (0.454)
Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludges from coking operations).				
K142	.....	4	K142	1 (0.454)
Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal.				
K143	.....	4	K143	1 (0.454)
Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by- products produced from coal.				
K144	.....	4	K144	1 (0.454)
Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.				
K145	.....	4	K145	1 (0.454)
Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.				
K147	.....	4	K147	1 (0.454)
Tar storage tank residues from coal tar refining.				
K148	.....	4	K148	1 (0.454)
Residues from coal tar distillation, including, but not limited to, still bottoms.				
K149	.....	4	K149	10 (4.54)
Distillation bottoms from the production of alpha-(or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. [This waste does not include still bottoms from the distillation of benzyl chloride.]				
K150	.....	4	K150	10 (4.54)
Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.				
K151	.....	4	K151	10 (4.54)
Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of waste-waters from the production of alpha-(or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.				
K156	.....	4	K156	##
Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)				

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
K157	.....	4	K157	##
Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)				
K158	.....	4	K158	##
Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)				
K159	.....	4	K159	##
Organics from the treatment of thiocarbamate wastes.				
K161	.....	4	K161	##
Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust and floor sweepings from the production of dithiocarbamate acids and their salts. (This does not include K125 or K126.)				
K169[f]	.....	4	K169	10 (4.54)
Crude oil storage tank sediment from petroleum refining operations.				
K170[f]	.....	4	K170	1 (0.454)
Clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations.				
K171[f]	.....	4	K171	1 (0.454)
Spent hydrotreating catalyst from petroleum refining operations. (This listing does not include inert support media.)				
K172[f]	.....	4	K172	1 (0.454)
Spent hydrorefining catalyst from petroleum refining operations. (This listing does not include inert support media.)				
K174[f]	.....	4	K174	1 (0.454)
K175[f]	.....	4	K175	1 (0.454)
K176	.....			
Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide)	.....	4	K176	1 (0.454)
K177	.....			
Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide)	.....	4	K177	5,000 (2270)
K178	.....			
Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride ilmenite process	.....	4	K178	1 (0.454)

† Indicates the statutory source defined by 1,2,3, and 4, as described in the note preceding Table 302.4.

†† No reporting of releases of this hazardous substance is required if the diameter of the pieces of the solid metal released is larger than 100 micrometers (0.004 inches).

††† The RQ for asbestos is limited to friable forms only.

The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then the statutory one-pound RQ applies.

§ The adjusted RQs for radionuclides may be found in Appendix B to this table.

** Indicates that no RQ is being assigned to the generic or broad class.

[a] Benzene was already a CERCLA hazardous substance prior to the CAA Amendments of 1990 and received an adjusted 10-pound RQ based on potential carcinogenicity in an August 14, 1989, final rule (54 FR 33418). The CAA Amendments specify that ''benzene (including benzene from gasoline)'' is a hazardous air pollutant and, thus, a CERCLA hazardous substance.

[b] The CAA Amendments of 1990 list DDE (3547–04–4) as a CAA hazardous air pollutant. The CAS number, 3547–04–4, is for the chemical, p,p'dichlorodiphenylethane. DDE or p,p'-dichlorodiphenyldichloroethylene, CAS number 72–55–9, is already listed in Table 302.4 with a final RQ of 1 pound. The substance identified by the CAS number 3547–04–4 has been evaluated and listed as DDE to be consistent with the CAA section 112 listing, as amended.

[c] Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

[d] Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH2CH2)n-OR' where:
n = 1, 2, or 3;
R = alkyl C7 or less; or
R = phenyl or alkyl substituted phenyl;
R' = H or alkyl C7 or less; or
OR' consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

[e] Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

[f] See 40 CFR 302.6(b)(1) for application of the mixture rule to this hazardous waste.

5. Appendix A to § 302.4 is amended by:

a. removing the following entries: 50293, 52857, 54115, 55630, 55914, 57125, 57249, 57976, 58899, 59507, 60117, 63252, 72208, 72548, 74931, 79016, 79221, 81072, 81812, 88857, 91941, 92875, 93721, 93765, 94757,

95476, 95487, 96184, 98873, 100447, 101144, 106423, 106445, 106503, 106934, 108101, 108383, 108394, 108952, 110758, 111444, 111546, 111911, 116063, 119904, 119937, 120581, 121448, 122394, 123911, 126998, 127184, 143339, 143500, 148823, 151508, 151564, 189559, 193395, 206440, 218019, 298022, 298044, 303344, 309002, 315184, 465736, 492808, 506616, 506649, 506683, 506774, 542881, 544923, 557197, 557211, 592018, 606202, 616239, 684935, 1314847, 1319773, 1327522, 1330207, 1563662, 2032657, 2763964, 7440417, 7488564, 7778394, 7783064, 7791120, 8001352, 8001589, 11096825, 11097691, 11104282, 11141165, 12039520, 12672296, 12674112, 13463393, 16752775, 17804352, 18883664, 20816120, 20830813, 23135220, 39196184, and 53469219.

b. adding the following entries: 50293, 52857, 54115, 55630, 55914, 57249, 57578, 57976, 58899, 59507, 59892, 60117, 60355, 63252, 64675, 68122, 72208, 72548, 74931, 79016, 79118, 79221, 81072, 81812, 88857, 90040, 91667, 91941, 92524, 92671, 92875, 92933, 93721, 93765, 94757, 95476, 95487, 96093, 98873, 100447, 101144, 101688, 101779, 106423, 106445, 106503, 106887, 106934, 106990, 107211, 108101, 108383, 108394, 108952, 110543, 110758, 111422, 111444, 111546, 111911, 114261, 116063, 119904, 119937, 120581, 120809, 121448, 121697, 123319, 123386, 123911, 126998, 127184, 132649, 133904, 143339, 143500, 148823, 151508, 151564, 156627, 189559, 193395, 206440, 218019, 298022, 298044, 303344, 309002, 315184, 334883, 463581, 465736, 492808, 506616, 506649, 506683, 506774, 532274, 540841, 542881, 544923, 557197, 557211, 592018, 593602, 606202, 680319, 684935, 822060, 1314847, 1319773, 1330207, 1563662, 1582098, 1634044, 2032657, 2763964, 3547044, 7440417, 7488564, 7550450, 7778394, 7783064, 7791120, 8001352, 11096825, 11097691, 11104282, 11141165, 12039520, 12672296, 12674112, 13463393, 16752775, 17804352, 18883664, 20816120, 20830813, 23135220, 39196184, and 53469219.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous Substance
*	* * * * * * *
50293	Benzene, 1,1′-(2,2,2- trichloroethylidene)bis[4-chloro-.
	DDT.
	4,4′-DDT.
*	* * * * * * *
52857	Famphur.
	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl] O,O-dimethyl ester.
*	* * * * * * *
54115	Nicotine, & salts.
	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, & salts.
*	* * * * * * *
55630	Nitroglycerine.
	1,2,3-Propanetriol, trinitrate.
55914	Diisopropylfluorophosphate (DFP).
	Phosphorofluororidic acid, bis(1-methylethyl) ester.
*	* * * * * * *
57249	Strychnidin-10-one, & salts.
	Strychnine, & salts.
*	* * * * * * *
57578	beta-Propiolactone.
*	* * * * * * *
57976	Benz[a]anthracene, 7,12-dimethyl-.
	7,12-Dimethylbenz[a]anthracene.
58899	γ-BHC.
	Cyclohexane, 1,2,3,4,5,6-hexachloro-(1α,2α,3β,4α,5α,6β)-.
	Lindane.
	Lindane (all isomers).
*	* * * * * * *
59507	p-Chloro-m-cresol.
	Phenol, 4-chloro-3-methyl-.
59892	N-Nitrosomorpholine.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
*	* * * * * * *
60117	Benzenamine, N,N-dimethyl-4-(phenylazo)-. Dimethyl aminoazobenzene. p-Dimethylaminoazobenzene.
*	* * * * * * *
60355	Acetamide.
*	* * * * * * *
63252	Carbaryl. 1-Naphthalenol, methylcarbamate.
*	* * * * * * *
64675	Diethyl sulfate.
*	* * * * * * *
68122	Dimethylformamide.
72208	Endrin. Endrin, & metabolites. 2,7:3.6-Dimethanonaphth[2,3-b]oxirene,3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2abeta,3alpha, 6alpha,6abeta,7beta,7aalpha)-, & metabolites.
*	* * * * * * *
72548	Benzene, 1,1′-(2,2-dichloroethylidene)bis[4-chloro-. DDD. TDE. 4,4′-DDD.
*	* * * * * * *
74931	Methanethiol. Methyl mercaptan. Thiomethanol.
*	* * * * * * *
79016	Ethene, trichloro-. Trichloroethylene.
*	* * * * * * *
79118	Chloroacetic acid.
*	* * * * * * *
79221	Carbonochloridic acid, methyl ester. Methyl chlorocarbonate.
*	* * * * * * *
81072	Saccharin, & salts. 1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, & salts.
81812	Warfarin, & salts. 2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts.
*	* * * * * * *
88857	Dinoseb. Phenol, 2-(1-methylpropyl)-4,6-dinitro-.
90040	o-Anisidine.
*	* * * * * * *
91667	N,N-Diethylaniline.
91941	[1,1′-Biphenyl]-4,4′-diamine,3,3′-dichloro-. 3,3′-Dichlorobenzidine.
92524	Biphenyl.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
92671	4-Aminobiphenyl.
92875	Benzidine.
	[1,1′-Biphenyl]-4,4′-diamine.
92933	4-Nitrobiphenyl.
	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-.
	Silvex (2,4,5-TP).
	2,4,5-TP acid.
93765	Acetic acid, (2,4,5-trichlorophenoxy)-.
	2,4,5-T.
	2,4,5-T acid.
*	* * * * * * *
94757	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters.
	2,4-D Acid.
	2,4-D, salts and esters.
*	* * * * * * *
95476	o-Xylene.
95487	o-Cresol.
*	* * * * * * *
96093	Styrene oxide.
*	* * * * * * *
98873	Benzal chloride.
	Benzene, (dichloromethyl)-.
*	* * * * * * *
100447	Benzene, (chloromethyl)-.
	Benzyl chloride.
*	* * * * * * *
101144	Benzenamine, 4,4′-methylenebis[2-chloro-.
	4,4′-Methylenebis(2-chloroaniline).
*	* * * * * * *
101688	MDI.
	Methylene diphenyl diisocyanate.
101779	4,4′-Methylenedianiline.
*	* * * * * * *
106423	p-Xylene.
106445	p-Cresol.
*	* * * * * * *
106503	p-Phenylenediamine.
*	* * * * * * *
106887	1,2-Epoxybutane.
*	* * * * * * *
106934	Dibromoethane.
	Ethane, 1,2-dibromo-.
	Ethylene dibromide.
106990	1,3-Butadiene.
*	* * * * * * *
107211	Ethylene glycol.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
*	* * * * * * *
108101	Hexone. Methyl isobutyl ketone. 4-Methyl-2-pentanone.
*	* * * * * * *
108383	m-Xylene.
108394	m-Cresol.
*	* * * * * * *
108952	Phenol.
*	* * * * * * *
110543	Hexane.
110758	Ethene, (2-chloroethoxy)-. 2-Chloroethyl vinyl ether.
*	* * * * * * *
111422	Diethanolamine.
111444	Bis(2-chloroethyl) ether. Dichloroethyl ether. Ethane, 1,1′-oxybis[2-chloro-.
111546	Carbamodithioic acid, 1,2-ethanediylbis-, salts & esters. Ethylenebisdithiocarbamic acid, salts & esters.
111911	Bis(2-chloroethoxy) methane. Dichloromethoxyethane. Ethane, 1,1′-[methylenebis(oxy)]bis(2-chloro-.
114261	Phenol, 2-(1-methylethoxy)-, methylcarbamate. Propoxur (Baygon).
*	* * * * * * *
116063	Aldicarb. Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime.
*	* * * * * * *
119904	[1,1′-Biphenyl]-4,4′-diamine,3,3′-dimethoxy-. 3,3′-Dimethoxybenzidine.
119937	[1,1′-Biphenyl]-4,4′-diamine,3,3′- dimethyl-. 3,3′-Dimethylbenzidine.
*	* * * * * * *
120581	Isosafrole. 1,3-Benzodioxole, 5-(1-propenyl)-.
120809	Catechol.
*	* * * * * * *
121448	Ethanamine, N,N-diethyl-. Triethylamine.
121697	N,N-Dimethylaniline.
*	* * * * * * *
123319	Hydroquinone.
*	* * * * * * *
123386	Propionaldehyde.
*	* * * * * * *
123911	1,4-Diethyleneoxide. 1,4-Dioxane.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
*	* * * * * * *
126998	Chloroprene.
127184	Ethene, tertrachloro-. Perchloroethylene. Tetrachloroethylene.
*	* * * * * * *
132649	Dibenzofuran.
*	* * * * * * *
133904	Chloramben.
*	* * * * * * *
143339	Sodium cyanide Na(CN).
143500	Kepone. 1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one,1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-.
*	* * * * * * *
148823	L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-. Melphalan.
151508	Potassium cyanide K(CN).
151564	Aziridine. Ethylenimine.
*	* * * * * * *
156627	Calcium cyanamide.
189559	Benzo[rst]pentaphene. Dibenzo[a,i]pyrene.
*	* * * * * * *
193395	Indeno(1,2,3-cd)pyrene.
*	* * * * * * *
206440	Fluoranthene.
*	* * * * * * *
218019	Chrysene.
*	* * * * * * *
298022	Phorate. Phosphorodithioic acid, O,O-diethyl S-[(ethylthio) methyl] ester.
298044	Disulfoton. Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester.
*	* * * * * * *
303344	Lasiocarpine. 2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*), 7aalpha]]-.
*	* * * * * * *
309002	Aldrin. 1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5alpha,8alpha, 8abeta)-.
*	* * * * * * *
315184	Mexacarbate. Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester).

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
*	* * * * * * *
334883	Diazomethane.
*	* * * * * * *
463581	Carbonyl sulfide.
465736	Isodrin. 1,4:5,8-Dimethanonaphthalene,1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5beta,8beta, 8abeta)-.
492808	Auramine. Benzenamine, 4,4′-carbonimidoylbis[N,N-dimethyl-.
*	* * * * * * *
506616	Argentate(1-), bis(cyano-C)-, potassium. Potassium silver cyanide.
506649	Silver cyanide Ag(CN).
506683	Cyanogen bromide (CN)Br.
506774	Cyanogen chloride (CN)Cl.
*	* * * * * * *
532274	2-Chloroacetophenone.
*	* * * * * * *
540841	2,2,4-Trimethylpentane.
*	* * * * * * *
542881	Bis(chloromethyl)ether. Dichloromethyl ether. Methane, oxybis(chloro-.
*	* * * * * * *
544923	Copper cyanide Cu(CN).
*	* * * * * * *
557197	Nickel cyanide $Ni(CN)_2$.
557211	Zinc cyanide $Zn(CN)_2$.
*	* * * * * * *
592018	Calcium cyanide $Ca(CN)_2$.
*	* * * * * * *
593602	Vinyl bromide.
*	* * * * * * *
606202	Benzene, 2-methyl-1,3-dinitro-. 2,6-Dinitrotoluene.
*	* * * * * * *
680319	Hexamethylphosphoramide.
684935	N-Nitroso-N-methylurea. Urea, N-methyl-N-nitroso-.
*	* * * * * * *
822060	Hexamethylene-1,6-diisocyanate.
*	* * * * * * *
1314847	Zinc phosphide Zn_3P_2.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
* * * * * * *	
1319773	Cresol (cresylic acid). Cresols (isomers and mixture). Cresylic acid (isomers and mixture). Phenol, methyl-.
* * * * * * *	
1330207	Benzene, dimethyl-. Xylene. Xylene (mixed). Xylenes (isomers and mixture).
* * * * * * *	
1563662	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate. Carbofuran.
1582098	Trifluralin.
* * * * * * *	
1634044	Methyl tert-butyl ether.
* * * * * * *	
2032657	Mercaptodimethur. Methiocarb. Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate.
* * * * * * *	
2763964	3(2H)-Isoxazolone, 5-(aminomethyl)-. 5-(Aminomethyl)-3-isoxazolol.
* * * * * * *	
3547044	DDE.
* * * * * * *	
7440417	Beryllium. Beryllium powder.
* * * * * * *	
7488564	Selenium sulfide SeS_2.
7550450	Titanium tetrachloride.
* * * * * * *	
7778394	Arsenic acid H_3AsO_4.
* * * * * * *	
7783064	Hydrogen sulfide H_2S.
* * * * * * *	
7791120	Thallium chloride TlCl.
* * * * * * *	
8001352	Chlorinated camphene. Toxaphene.
11096825	Aroclor 1260.
11097691	Aroclor 1254.
11104282	Aroclor 1221.
* * * * * * *	
11141165	Aroclor 1232.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
*	* * * * * * *
12039520	Selenious acid, dithallium(1+) salt. Thallium (I) selenite.
*	* * * * * * *
12672296	Aroclor 1248.
12674112	Aroclor 1016.
*	* * * * * * *
13463393	Nickel carbonyl $Ni(CO)_4$, (T–4)-.
*	* * * * * * *
16752775	Ethanimidothioic acid, N-[[(methylamino)carbonyl] oxy]-, methyl ester. Methomyl.
*	* * * * * * *
17804352	Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester (Benomyl).
18883664	D-Glucose, 2-deoxy-2[[(methylnitrosoamino)-carbonyl]amino]-. Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-. Streptozotocin.
20816120	Osmium oxide OsO_4, (T–4)-. Osmium tetroxide.
20830813	Daunomycin. 5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-.
*	* * * * * * *
23135220	Ethanimidothioic acid, 2-(dimethylamino)-N-[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl).
*	* * * * * * *
39196184	Thiofanox. 2-Butanone, 3,3-dimethyl-1-(methylthio)-,O-[(methylamino)carbonyl] oxime.
*	* * * * * * *
53469219	Aroclor 1242.

6. Section 302.5 is amended by revising paragraph (b) to read as follows:

§ 302.5 Determination of reportable quantities.

* * * * *

(b) *Unlisted hazardous substances.* Unlisted hazardous substances designated by 40 CFR 302.4(b) have the reportable quantity of 100 pounds, except for those unlisted hazardous wastes which exhibit toxicity identified in 40 CFR 261.24. Unlisted hazardous wastes which exhibit toxicity have the reportable quantities listed in Table 302.4 for the contaminant on which the characteristic of toxicity is based. The reportable quantity applies to the waste itself, not merely to the toxic contaminant. If an unlisted hazardous waste exhibits toxicity on the basis of more than one contaminant, the reportable quantity for that waste shall be the lowest of the reportable quantities listed in Table 302.4 for those contaminants. If an unlisted hazardous waste exhibits the characteristic of toxicity and one or more of the other characteristics referenced in 40 CFR 302.4(b), the reportable quantity for that waste shall be the lowest of the applicable reportable quantities.

7. Section 302.6 is amended by revising paragraph (a) to read as follows:

§ 302.6 Notification requirements.

(a) Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he or she has knowledge of any release (other than a federally permitted release or application of a pesticide) of a hazardous substance from such vessel or facility in a quantity equal to or exceeding the reportable quantity determined by this part in any 24-hour period, immediately notify the National Response Center ((800) 424–8802; in Washington, DC (202) 426–2675 or (202) 267–2675; the facsimile number is (202) 267–2165; and the telex number is 892427).

* * * * *

8. Section 302.7 is amended by revising paragraph (a)(3) to read as follows:

§ 302.7 Penalties.

(a) * * *

(3) In charge of a facility from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than that reportable quantity determined under this part who fails to notify immediately the National Response Center as soon as he or she has knowledge of such release

or who submits in such a notification any information which he knows to be false or misleading shall be subject to all of the sanctions, including criminal penalties, set forth in section 103(b) of the Act.

* * * * *

9. Section 302.8 is amended by revising paragraphs (e)(1)(iv)(H) and (f)(4)(viii) to read as follows:

§ 302.8 Continuous releases.

* * * * *

(e) * * *

(1) * * *

(iv) * * *

(H) A signed statement that the hazardous substance release(s) described is(are) continuous and stable in quantity and rate under the definitions in paragraph (b) of this section and that all reported information is accurate and current to the best knowledge of the person in charge.

(f) * * *

(4) * * *

(viii) A signed statement that the hazardous substance release(s) is(are) continuous and stable in quantity and rate under the definitions in paragraph (b) of this section and that all reported information is accurate and current to the best knowledge of the person in charge.

* * * * *

[FR Doc. 02–16866 Filed 7–8–02; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2510, 2520, 2521, 2522, 2524, 2525, 2526, 2528, and 2550

RIN 3045–AA32

AmeriCorps Grant Regulations

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') is amending several provisions relating to the AmeriCorps national service program, including requirements for AmeriCorps grants and rules on how AmeriCorps members may use the AmeriCorps education award. This final rule will eliminate several unnecessary and burdensome requirements in the AmeriCorps grants program, and conform the Corporation's regulations to changes in law.

DATES: The amendments are effective August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Gary Kowalczyk, Coordinator of National Service Programs, Corporation for National and Community Service, (202) 606–5000, ext. 340. T.D.D. (202) 565–2799. This is not a toll-free number. This final rule may be requested in an alternative format for persons with visual impairments.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 *et seq.*), the Corporation makes grants to support service performed by AmeriCorps members. In addition, the Corporation, through the National Service Trust, provides education awards and certain interest payments to AmeriCorps members who successfully complete a term of service in an approved national service position.

The Corporation published a proposed rule on March 26, 2002 (67 FR 13738) with the goal of eliminating several unnecessary and burdensome requirements in the AmeriCorps grants program, and conforming the Corporation's regulations to changes in law.

Discussion of the Final Rule

The Corporation received comments from nine individuals and organizations in response to the proposed rule. As a general matter, only one of the comments the Corporation received resulted in a change to the proposed rule. Consequently, other than § 2520.30, the final rule is identical to the proposed rule as published on March 26, 2002.

Flexibility in Types of AmeriCorps Activities

One commenter specifically approved of the Corporation's proposal to broaden the circumstances under which AmeriCorps members may engage in activities that provide an indirect benefit to their community. The Corporation may approve such activities with respect to disaster relief, homeland defense, and other compelling community needs.

Eligibility of Religious Organizations for AmeriCorps Grants

Two commenters specifically endorsed the Corporation's references to religious organizations in several lists of types of organizations eligible to apply for AmeriCorps grants. A basic purpose of these amendments is to clarify that religious organizations are eligible on the same basis as any other private nonprofit organization to apply for AmeriCorps grants and operate AmeriCorps programs.

Elimination of ''Six Month Rule''

Five commenters wrote in support of eliminating the ''six month rule.'' The final rule, thus, eliminates a requirement under which grantees could not select any prospective AmeriCorps member who is or was previously employed by a prospective project sponsor within six months of the member's enrollment in the program. The commenters agreed that there are more effective and efficient ways to ensure that grantees are complying with rules against displacement, without imposing a blanket ''six month rule.'' By continuing to require grantees to show how a proposed project will address unmet needs and by enforcing existing rules against displacement, the Corporation can ensure that any former employees enrolled as AmeriCorps members will perform service that goes well beyond—in both degree and kind—their former job duties.

Use of Education Award for Educational Courses Offered by Title IV Institutions of Higher Education

Three commenters supported the Corporation's expansion of the use of the education award to allow AmeriCorps members to use their education award to pay any current educational expenses at institutions of higher education that have entered into program participation agreements with the U.S. Department of Education under Title IV of the Higher Education Act (HEA).

Refunds to the National Service Trust

The Corporation received no comments relating to the proposed rule on refunds to the National Service Trust.

Declaration Sufficient Documentation of Member's Attainment of High School Diploma

Three commenters specifically supported the Corporation's proposal to allow self-declaration as sufficient documentation of a member's attainment of a high school diploma or its equivalent. The final rule provides that an individual's written declaration under penalty of law is sufficient to establish this element of eligibility without additional documentation.

One commenter suggested that the Corporation replace the current regulations relating to documentation of citizenship, nationality, and lawful permanent resident alien status by authorizing grantees to use the I–9 to document eligibility for AmeriCorps.

The I–9—the Immigration and Naturalization Service's Employment Eligibility Verification Form—is not, however, an appropriate basis for determining eligibility for AmeriCorps. To be eligible to serve in AmeriCorps, an individual must be a United States citizen, a United States National, or a lawful permanent resident of the United States. The categories of eligibility on the I–9 are far more numerous than the categories of eligibility for AmeriCorps. Simply having authorization to work in the United States is not sufficient to show eligibility for AmeriCorps, and using the I–9 to establish eligibility could result in ineligible individuals enrolling in AmeriCorps.

Clarification of Statutory List of Prohibited Activities

One commenter suggested changes to part 2520.30, specifically with respect to the regulation as it relates to religious organizations. This commenter suggested that the Corporation modify subsection (g) in the proposed rule by adding to it the standard from subsection (h)(5), such that the end of that section would read ''...unless Corporation assistance is not used to support those religious activities.'' The commenter believed that this addition would allow religious organizations, and their employees and representatives actually performing public service, to ''legally and practically participate in Corporation programs.'' In addition, this commenter opined that the terms ''activities associated with the AmeriCorps program or the Corporation'' and ''any form of religious proselytization'' should be clarified.

Addressing the two latter comments first, the Corporation is amending the proposed rule to clarify that it applies to activities ''supported by the AmeriCorps program or the Corporation.'' In addition, the Corporation has added a subsection to make clear that AmeriCorps members may voluntarily take part in any of the prohibited activities on their own time.

With respect to clarifying the phrase ''any form of religious proselytization,'' the Corporation notes that the phrase uses the same words as section 132 of the National and Community Service Act. We believe that using the precise statutory language is appropriate here. Furthermore, we note that an individual may engage in such activities on his or her own time.

With respect to the commenter's first suggestion, the Corporation believes that the proposed rule already applies the standard that the commenter seeks to reinforce by adding the proposed language. The first sentence of part 2520.30 is essentially a definition of what we consider to be using Corporation assistance. To the extent that an individual participates in activities outside the parameters of that definition, those activities would not be considered to be funded using Corporation assistance and, consequently, would not be prohibited. Nonetheless, the Corporation believes that the changes it is making to the proposed rule, as described above, further reinforce the distinction between activities funded using Corporation assistance and those not.

Elimination of Obsolete References to Palau

The Corporation received no comments regarding eliminating references to Palau, which became independent on October 1, 1994 and is no longer eligible as a U.S. Territory for AmeriCorps grants.

Eligibility of Territories for Administrative Funds

The Corporation received no comments regarding its inclusion of the territories as entities eligible to apply for grants under this section, in order to comply with the NCSA.

Definition of Institution of Higher Education

The Corporation received no comments regarding the proposal to amend the regulations to conform with the statutory amendments to the National and Community Service Act of 1990, as amended.

Other

One commenter suggested that the Corporation allow members to serve for 3 years in AmeriCorps (presumably AmeriCorps*State and *National) rather than 2 years. Another commenter suggested that the Corporation allow agencies to host more than two cycles of grant funding; reduce the minimum number of FTE for a program to be eligible; make the education award and living allowance non-taxable income; remove the tax burden for student loan interest payments; and allow the education award to be transferable to family members. All of these suggestions were outside the scope of the proposed rule, and several were outside the Corporation's statutory authority. Consequently, the Corporation is not responding to these comments at this time.

Executive Order 12866

The Corporation has determined that this regulatory action is not a ''significant'' rule within the meaning of Executive Order 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Corporation has determined that this regulatory action will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

Because the changes do not authorize any information collection activity outside the scope of existing regulations, this regulatory action is not subject to review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3500 *et seq.*). If the Corporation proposes to modify any of the forms used in connection with determining eligibility of individuals for payments from the National Service Trust, the Corporation will comply with clearance procedures as provided under the Paperwork Reduction Act.

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden

exceeding $100 million on the private sector.

List of Subjects

45 CFR Part 2510

Grant programs—social programs, Volunteers.

45 CFR Part 2520

Grant programs—social programs, Volunteers.

45 CFR Part 2521

Grant programs—social programs, Volunteers.

45 CFR Part 2522

Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2524

Grant programs—social programs, Technical assistance, Volunteers.

45 CFR Part 2525

Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2526

Education, Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2528

Education, Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2550

Administrative practice and procedure, Grant programs—social programs.

For the reasons stated in the preamble, the Corporation for National and Community Service amends chapter XXV, title 45 of the Code of Federal Regulations as follows:

PART 2510—OVERALL PURPOSES AND DEFINITIONS

1. The authority citation for part 2510 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Amend § 2510.20 by revising the definition of ''Institution of higher education,'' and by adding the definition ''Subtitle C program'' in alphabetical order to read as follows:

§ 2510.20 Definitions.

* * * * *

Institution of higher education. The term *institution of higher education* has the same meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

* * * * *

Subtitle C program. The term *subtitle C program* means an AmeriCorps program authorized and funded under subtitle C of the National and Community Service Act of 1990, as amended. (NCSA) (42 U.S.C. 12501 *et seq.*) It does not include demonstration programs, or other AmeriCorps programs, funded under subtitle H of the NCSA.

* * * * *

PART 2520—GENERAL PROVISIONS: AMERICORPS SUBTITLE C PROGRAMS

1. Revise the heading of part 2520 to read as set forth above.

2. The authority citation for part 2520 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

3. Revise § 252.10 to read as follows:

§ 2520.10 What is the purpose of the AmeriCorps subtitle C program described in parts 2520 through 2524 of this chapter?

The purpose of the AmeriCorps subtitle C program is to provide financial assistance under subtitle C of the National and Community Service Act to support AmeriCorps programs that address educational, public safety, human, or environmental needs through national and community service, and to provide AmeriCorps education awards to participants in such programs.

4. Revise § 2520.20 to read as follows:

§ 2520.20 What types of service activities are allowed for AmeriCorps subtitle C programs supported under parts 2520 through 2524 of this chapter?

(a) Except as provided in paragraph (b) of this section, the service must either provide a direct benefit to the community where it is performed, or involve the supervision of participants or volunteers whose service provides a direct benefit to the community where it is performed. Moreover, the approved AmeriCorps activities must result in a specific identifiable service or improvement that otherwise would not be provided and that does not duplicate the routine functions of workers or displace paid employees. Programs must develop service opportunities that are appropriate to the skill levels of participants and that provide a demonstrable, identifiable benefit that the community values.

(b) In certain circumstances, some activities may not provide a direct benefit to the communities in which the service is performed. Such activities may include, but are not limited to, clerical work and research. However, a participant may engage in such activities only if the performance of the activity is incidental to the program's provision of service that does provide a direct benefit to the community in which the service is performed, or if the Corporation approves such activities in connection with disaster relief, homeland defense, or other compelling community needs.

5. Revise § 2520.30 to read as follows:

§ 2520.30 What activities are prohibited in AmeriCorps subtitle C programs?

(a) While charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps program or the Corporation, staff and members may not engage in the following activities:

(1) Attempting to influence legislation;

(2) Organizing or engaging in protests, petitions, boycotts, or strikes;

(3) Assisting, promoting, or deterring union organizing;

(4) Impairing existing contracts for services or collective bargaining agreements;

(5) Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;

(6) Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;

(7) Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;

(8) Providing a direct benefit to—

(i) A business organized for profit;

(ii) A labor union;

(iii) A partisan political organization;

(iv) A nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 except that nothing in this section shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and

(v) An organization engaged in the religious activities described in paragraph (g) of this section, unless Corporation assistance is not used to support those religious activities; and

(9) Such other activities as the Corporation may prohibit.

(b) Individuals may exercise their rights as private citizens and may

participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-Corporation funds. Individuals should not wear the AmeriCorps logo while doing so.

PART 2521—ELIGIBLE AMERICORPS SUBTITLE C PROGRAM APPLICANTS AND TYPES OF GRANTS AVAILABLE FOR AWARD

1. Revise the heading of part 2521 to read as set forth above.

2. The authority citation for part 2521 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

3. Amend § 2521.10 by revising the section heading and paragraph (a) to read as follows:

§ 2521.10 Who may apply to receive an AmeriCorps subtitle C grant?

(a) States (including Territories), subdivisions of States, Indian tribes, public or private nonprofit organizations (including religious organizations and labor organizations), and institutions of higher education are eligible to apply for AmeriCorps subtitle C grants. However, the fifty States, the District of Columbia and Puerto Rico must first receive Corporation authorization for the use of a State Commission or alternative administrative or transitional entity pursuant to part 2550 of this chapter in order to be eligible.

* * * * *

4. Amend § 2521.20 as follows:

a. By revising the section heading, paragraph (a)(2)(ii) and the first sentence of paragraph (b)(2)(ii);

b. Removing paragraph (c); and

c. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d) respectively.

The revisions read as follows:

§ 2521.20 What types of AmeriCorps subtitle C program grants are available for award?

* * * * *

(a) * * *

(2) * * *

(ii) Subdivisions of States, Indian Tribes, public or private nonprofit organizations (including religious organizations and labor organizations), and institutions of higher education may apply either to a State or directly to the Corporation for planning grants.

* * * * *

(b) * * *

(2) * * *

(ii) Subdivisions of States, Indian Tribes, public or private nonprofit organizations (including religious organizations and labor organizations), and institutions of higher education may apply either to a State or directly to the Corporation for operational grants. * * *

* * * * *

5. Amend § 2521.30 by revising the section heading, the introductory text, paragraph (b)(1), footnote 1 to paragraph (b)(1), and the first sentence of paragraph (b)(3) to read as follows:

§ 2521.30 How will AmeriCorps subtitle C program grants be awarded?

In any fiscal year, the Corporation will award AmeriCorps subtitle C program grants as follows:

* * * * *

(b) * * *

(1) One percent of available funds will be distributed to the U.S. Territories [1] that have applications approved by the Corporation according to a population-based formula.[2]

* * * * *

(3) The Corporation will use any funds available under this part remaining after the award of the grants described in paragraphs (a) and (b) (1) and (2) of this section to make direct competitive grants to subdivisions of States, Indian tribes, public or private nonprofit organizations (including religious organizations and labor organizations), institutions of higher education, and Federal agencies. * * *

* * * * *

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

1. The authority citation for part 2522 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Amend § 2522.100 by revising the section heading and the first sentence of the introductory text, removing the period at the end of the penultimate sentence of paragraph (g)(1) and adding a semicolon in its place, and removing the last sentence of paragraph (g)(1) to read as follows:

§ 2522.100 What are the minimum requirements that AmeriCorps subtitle C grantees must meet?

Although a wide range of programs may be eligible to apply for and receive support from the Corporation, all AmeriCorps subtitle C programs must meet certain minimum program requirements. * * *

* * * * *

3. Amend § 2522.200 by redesignating paragraphs (b) through (d) as paragraphs (c) through (e) respectively, adding a new paragraph (b), and revising the heading of the newly designated paragraph (e) to read as follows:

§ 2522.200 What are the eligibility requirements for an AmeriCorps participant?

* * * * *

(b) *Written declaration regarding high school diploma sufficient for enrollment.* For purposes of enrollment, if an individual provides a written declaration under penalty of law that he or she meets the requirements in paragraph (a) of this section relating to high school education, a program need not obtain additional documentation of that fact.

* * * * *

(e) *Secondary documentation of citizenship or immigration status.* * * *

* * * * *

PART 2524—AMERICORPS TECHNICAL ASSISTANCE AND OTHER SPECIAL GRANTS

1. The authority citation for part 2524 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Amend § 2524.10 by revising paragraph (a) introductory text to read as follows:

§ 2524.10 For what purposes will technical assistance and training funds be made available?

(a) To the extent appropriate and necessary, the Corporation may make technical assistance available to States, Indian tribes, labor organizations, religious organizations, organizations operated by young adults, organizations serving economically disadvantaged individuals, and other entities eligible to apply for assistance under parts 2521 and 2522 of this chapter that desire—

* * * * *

PART 2525—NATIONAL SERVICE TRUST: PURPOSE AND DEFINITIONS

1. The authority citation for part 2525 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Amend § 2525.20 by revising the definition ''Current educational expenses'' and by adding the definitions ''Educational expenses'' and ''Period of enrollment'' in alphabetical order to read as follows:

---

[1] The United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[2] The amount allotted as a grant to each such territory or possession is equal to the ratio of each such Territory's population to the population of all such territories multiplied by the amount of the one percent set-aside.

§ 2525.20 Definitions.

* * * * *

Current educational expenses. The term *current educational expenses* means the cost of attendance, or other costs attributable to an educational course offered by an institution of higher education that has in effect a program participation agreement under Title IV of the Higher Education Act, for a period of enrollment that begins after an individual enrolls in an approved national service position.

* * * * *

Educational expenses at a Title IV institution of higher education. The term *educational expenses* means—

(1) Cost of attendance as determined by the institution; or

(2) Other costs at a title IV institution of higher education attributable to a non-title IV educational course as follows:

(i) Tuition and fees normally assessed a student for a course or program of study by the institution, including costs for rental or purchase of any books or supplies required of all students in the same course of study;

(ii) For a student engaged in a course of study by correspondence, only tuition and fees and, if required, books, and supplies;

(iii) For a student with a disability, an allowance (as determined by the institution) for those expenses related to the student's disability, including special services, personal assistance, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies; and

(iv) For a student engaged in a work experience under a cooperative education program or course, an allowance for reasonable costs associated with such employment (as determined by the institution).

* * * * *

Period of enrollment. Period of enrollment means the period that the title IV institution has established for which institutional charges are generally assessed (i.e., length of the student's course, program, or academic year.)

* * * * *

PART 2526—ELIGIBILITY FOR AN EDUCATION AWARD

1. The authority citation for part 2526 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Amend § 2526.10 by redesignating paragraphs (c) and (d) as paragraphs (d) and (e) respectively, and adding a new paragraph (c) to read as follows:

§ 2526.10 Who is eligible to receive an education award from the National Service Trust?

* * * * *

(c) *Written declaration regarding high school diploma sufficient for disbursement.* For purposes of disbursing an education award, if an individual provides a written declaration under penalty of law that he or she meets the requirements in paragraph (b) of this section relating to high school education, no additional documentation is needed.

* * * * *

PART 2528—USING AN EDUCATION AWARD

1. The authority citation for part 2528 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Amend § 2528.10 by revising paragraph (a)(2) to read as follows:

§ 2528.10 For what purposes may an education award be used?

(a) * * *

(2) To pay all or part of the current educational expenses at an institution of higher education in accordance with §§ 2528.30 through 2528.50;

* * * * *

3. Amend § 2528.30 by revising the section heading, paragraph (a) introductory text, and paragraphs (a)(2)(iii), (a)(2)(iv), and (a)(2)(v) to read as follows:

§ 2528.30 What steps are necessary to use an education award to pay all or part of the current educational expenses at an institution of higher education?

(a) *Required information.* Before disbursing an amount from an education award to pay all or part of the current educational expenses at an institution of higher education, the Corporation must receive—

* * * * *

(2) * * *

(iii) If an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided, the institution of higher education will ensure an appropriate refund to the Corporation of the unused portion of the education award under its own published refund policy, or if it does not have one, provide a pro-rata refund to the Corporation of the unused portion of the education award;

(iv) Individuals using education awards to pay for the current educational expenses at that institution do not comprise more than 15 percent of the institution's total student population;

(v) The amount requested will be used to pay all or part of the individual's cost of attendance or other educational expenses attributable to a course offered by the institution;

* * * * *

4. Amend § 2528.50 by revising paragraph (a) to read as follows:

§ 2528.50 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which the Corporation has disbursed all or part of that individual's education award?

(a)(1) If an individual for whom the Corporation has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment, an institution of higher education that receives a disbursement of education award funds from the Corporation must provide a refund to the Corporation in an amount determined under that institution's published refund requirements.

(2) If an institution for higher education does not have a published refund policy, the institution must provide a pro-rata refund to the Corporation of the unused portion of the education award.

* * * * *

5. Amend § 2528.60 by revising paragraph (a)(2)(iii) to read as follows:

§ 2528.60 What steps are necessary to use an education award to pay expenses incurred in participating in an approved school-to-work program?

(a) * * *

(2) * * *

(iii) If an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided, the school-to-work program will ensure an appropriate refund to the Corporation of the unused portion of the education award under its own published refund policy, or if it does not have one, provide a pro-rata refund to the Corporation of the unused portion of the education award.

* * * * *

6. Amend § 2528.70 by revising paragraph (a) to read as follows:

§ 2528.70 What happens if an individual withdraws or fails to complete the period of enrollment in an approved school-to-work program for which the Corporation has disbursed all or part of that individual's education award?

(a)(1) If an individual for whom the Corporation has disbursed education award funds withdraws or otherwise

fails to complete a period of enrollment, an approved school-to-work program that receives a disbursement of education award funds from the Corporation must provide a refund to the Corporation determined under that program's published refund policy.

(2) If a school-to-work program does not have a published refund policy, the program must provide a pro-rata refund to the Corporation of the unused portion of the education award.

* * * * *

PART 2550—REQUIREMENTS AND GENERAL PROVISION FOR STATE COMMISSIONS, ALTERNATIVE ADMINISTRATIVE ENTITIES AND TRANSITIONAL ENTITIES

1. The authority citation for part 2550 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Amend § 2550.10 by revising paragraph (c) to read as follows:

§ 2550.10 What is the purpose of this part?

* * * * *

(c) The Corporation will distribute grants of between $125,000 and $750,000 to States to cover the Federal share of operating the State Commissions, AAEs, or Transitional Entities.

* * * * *

3. Amend § 2550.20 by revising paragraph (k) to read as follows:

§ 2550.20 Definitions.

* * * * *

(k) *State.* As used in this part, the term State refers to each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

* * * * *

Dated: July 2, 2002.

Gary Kowalczyk,

Director of Planning and Program Integration.

[FR Doc. 02–16957 Filed 7–8–02; 8:45 am]

BILLING CODE 6050–$$–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 22, 24, 25, 27, 73, 74, 80, 90, 95, 100, and 101

[DA 02–847]

Competitive Bidding Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document makes conforming edits to service-specific competitive bidding rules and portions of the part 1 general competitive bidding rules in accordance with the authority delegated by the Commission. These conforming edits further the Wireless Telecommunication Bureau's (''Bureau'') continuing efforts to streamline its procedures in accordance with the Commission's biennial regulatory review obligations. In addition to making these conforming edits, the Bureau also exercises its delegated authority to make certain ministerial conforming amendments, including edits to correct competitive bidding provisions that were inadvertently altered or deleted. The intended effect of this action is to eliminate approximately 66 pages of redundant or unnecessary rules from the Code of Federal Regulations.

DATES: Effective August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Francis Gutierrez or Robert Krinsky of the Auctions and Industry Analysis Division at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Competitive Bidding Order* adopted and released on April 11, 2002. After release of the order, the Bureau released three errata which made minor corrections to the order. The first two errata were incorporated into the version of the *Competitive Bidding Order* published in the FCC Record (17 FCC Rcd 6534 (WTB 2002)). The third erratum was released on June 14, 2002, DA 02–1414. All three errata have been incorporated in the text of the rules accompanying this **Federal Register** summary. The full text of these documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. These documents may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

I. Introduction

1. In the *Competitive Bidding Order*, the Wireless Telecommunications Bureau (''Bureau'') makes conforming edits to service-specific competitive bidding rules and portions of the part 1 general competitive bidding rules in accordance with the authority delegated by the Commission in the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000). These conforming edits further the Bureau's continuing efforts to streamline its procedures in accordance with the Commission's biennial regulatory review obligations set forth at section 11(a) of the Communications Act of 1934, as amended, and the recommendations contained in the *2000 Biennial Staff Report*. In addition to making these conforming edits, the Bureau also exercises its delegated authority to make certain ministerial conforming amendments, including edits to correct competitive bidding provisions that were inadvertently altered or deleted by the *Part 1 Third Report and Order*, 63 FR 2315 (January 15, 1998), and the *Competitive Bidding Sixth Report and Order*, 60 FR 37786 (July 21, 1995). The Bureau also removes service-specific provisions that are redundant with the Bureau's delegated authority to conduct auctions. The effect of today's action is to eliminate approximately 66 pages of redundant or unnecessary rules from the Code of Federal Regulations (''CFR'').

II. Background

2. In the *Competitive Bidding Second Report and Order*, 59 FR 22980 (May 4, 1994), by amending part 1 of the Commission's rules to add a new subpart Q, the Commission established general competitive bidding rules that would apply to a variety of spectrum based services licensed by the Commission. In establishing these rules, the Commission intended that the general competitive bidding rules would apply to a particular service unless it adopted service-specific rules that varied from the part 1 general competitive bidding rules. Subsequently, the Commission adopted competitive bidding rules for a number of services. A consequence of the adoption of these service-specific competitive bidding rules was an unnecessary variation in procedures across services. Additionally, portions of the part 1 general competitive bidding rules were repeated almost verbatim in the service-specific competitive bidding rules. Accordingly, in 1997, based upon its experience with the competitive bidding process, the Commission initiated the part 1 proceeding to establish a uniform set of provisions for all services subject to competitive bidding, eliminate unnecessary rules, and provide for a more consistent and efficient licensing process.

3. In the *Part 1 Fifth Report and Order*, the most recent comprehensive Order in the part 1 proceeding, the Commission determined that it had

made the majority of the changes contemplated by its prior orders. Therefore, the Commission recognized that it was appropriate to commence the next step in the process, *i.e.,* eliminating service-specific competitive bidding rules from the CFR that have either been superseded by or are redundant with the part 1 general competitive bidding rules. Accordingly, the Commission delegated to the Bureau the authority to make conforming edits to the CFR consistent with the part 1 proceeding.

III. Discussion

4. Pursuant to our delegated authority, the *Competitive Bidding Order* identifies and removes service-specific competitive bidding rules that have been superseded or made redundant by the part 1 general competitive bidding rules. In those instances in which service-specific departures from the part 1 general competitive bidding rules were tailored for a particular service, the Bureau retains such rules. In addition, pursuant to the Bureau's delegated authority to make ministerial conforming edits to Commission rules, the Bureau restores and revises certain rule sections that were inadvertently altered, deleted, or misstated.

5. As explained, the Bureau modifies or removes service-specific competitive bidding rules in the following areas: (i) Scope of service-specific competitive bidding rules; (ii) competitive bidding design options; (iii) competitive bidding mechanisms; (iv) bidding application and certification procedures, and prohibition of collusion; (v) submission of upfront payments; (vi) submission of down and full payments, and filing of long-form applications; (vii) procedures for filing petitions to deny against long-form applications; (viii) license grant, denial, default, and disqualification; (ix) designated entities; (x) unjust enrichment in license assignment or transfer of control; (xi) ownership disclosure requirements for short- and long-form applications; and (xii) definitions. Also, technical edits are made to Commission rules that refer to service-specific competitive bidding rules that have been removed or modified.

6. *Scope of service-specific competitive bidding rules.* Each set of service-specific competitive bidding rules contains a provision that provides that the general competitive bidding rules set forth at part 1, subpart Q of the Commission's rules apply unless the service-specific rules indicate otherwise. This means that service-specific competitive bidding rules are necessary only to specify departures from or supplemental procedures to the part 1 competitive bidding rules. The Bureau adopts uniform language stating this proposition in all services subject to competitive bidding and modifies the following service-specific rules: §§ 21.950; 22.201; 22.228; 22.960; 24.301; 24.701; 25.401; 27.201; 27.501(a); 27.701; 73.3572(e)(2), (f); 73.5000(a); 80.1251; 90.801; 90.901; 90.1001; 90.1101; 95.816(a); 100.71; 101.537; 101.1101; 101.1201; and 101.1317.

7. *Competitive bidding design options.* Section 1.2103 of the Commission's rules outlines the general competitive bidding design options (or the different competitive bidding methodologies) for services or classes of services subject to competitive bidding. These competitive bidding design options include: simultaneous multiple-round auctions (using remote or on-site electronic bidding); sequential multiple-round auctions (using either oral ascending or remote and/or on-site electronic bidding); sequential or simultaneous single-round auctions (using either sealed paper or remote and/or on-site electronic bidding); combinatorial (package/contingent) bidding auctions; and real-time bidding in all electronic auction designs. The following service-specific rules, which are redundant with all or part of § 1.2103, are removed: §§ 21.951(a)–(a)(1); 22.203; 22.961; 24.702; 90.802; 90.902; 90.1003; 100.72; 101.1102; and 101.1202.

8. *Competitive bidding mechanisms.* Section 1.2104 of the Commission's rules describes the mechanisms used to implement the Commission's competitive bidding design provisions. This rule also sets forth the treatment of bid withdrawal, down and full payment default, and bidder disqualification. The following service-specific rules redundant with all or part of the competitive bidding design mechanism provisions of § 1.2104 are modified or removed: §§ 21.951(a)(2)–(c); 22.205; 22.962; 25.402; 27.202; 73.5001; 90.803; 90.903(c)–(f); 90.1005; 90.1015(b); 100.73; 101.1103; and 101.1203. Also, the following service-specific rules, which conflict or are redundant with all or part of the bid withdrawal, down or full payment default, and disqualification payment rules of § 1.2104, are removed: §§ 21.959(a)–(b); 22.207; 22.215(b); 22.963; 24.704; 27.203; 73.5004(a); 90.805; 90.905; 90.1007; 100.74; and 100.78(b).

9. *Bidding application and certification procedures; prohibition of collusion.* Section 1.2105 of the Commission's rules describes the short-form application (''FCC Form 175'') and certification procedures and the prohibition against applicant collusion. Section 1.2105 sets forth the information and certifications that applicants must provide to participate in an auction. This section also prohibits applicants from communicating with each other about bids, bidding strategies, or settlements if the applicants are bidding on licenses in the same geographic area unless applicants are members of bidding arrangements identified on a bidder's short-form application. This prohibition period commences at the short-form application filing deadline and concludes at the post-auction down payment deadline. The following service-specific rules, which are redundant with all or part of the part 1 short-form application and certification procedures in § 1.2105, are removed in whole or in part: §§ 21.952; 22.209; 22.227; 22.964; 24.709(a)(4)–(5); 27.204(a)–(b); 90.806; 90.906; 90.1009; 100.75; 101.531(a); 101.1104; and 101.1204. Also, the following service-specific rules, which are redundant with all or part of the prohibition on collusion in § 1.2105, are modified or removed in whole or in part: §§ 21.953; 25.405; 27.204(c); and 100.79.

10. *Submission of upfront payments.* Section 1.2106 of the Commission's rules describes the procedures for submitting upfront payments, i.e., the sums an applicant that complies with the short-form application requirements tenders to the Commission before an auction in order to be qualified to bid. The following service-specific rules, which conflict or are redundant with all or part of § 1.2106 of the Commission's rules, are removed in whole or in part: §§ 21.954; 22.211(a); 22.965(a); 24.706(a), (c); 24.711(a)(1); 24.716(a)(1); 27.205; 73.5003(a); 90.807(a); 90.907(a); 90.1011(a); 100.76(a); 101.1105(a); and 101.1205(a).

11. *Submission of down and full payments, and filing of long-form applications.* Section 1.2107 of the Commission's rules describes the procedures for submitting down and full payments and filing the long-form application (''FCC Form 601''). The Bureau recognizes that other licensing bureaus may use different FCC Forms for their long-form application. The down payment is the sum that the winning bidder(s) must tender to the Commission after the auction closes to bring its total deposit(s) up to twenty (20) percent of its high bid(s). This payment assures the Commission that the winning bidder is able to tender the full amount of its bid when it later comes due. Unless otherwise specified by public notice, the down payment must be made within ten (10) business days after the winning bidder is notified

that it is the high bidder for a license(s). The Commission relies upon the long-form application to determine whether the winning bidder is qualified to be a licensee. The long-form application must be submitted within ten (10) business days after the winning bidder is notified that it is the high bidder. After submission of the down payment and long-form application, the winning bidder must submit the full payment due on the license(s) within ten (10) business days of notification that the license(s) is ready for grant, unless it qualifies to make installment payments. If the winning bidder fails to make the full payment within this time period, it is afforded an additional ten (10) day period to make full payment, provided that it also pays a late fee equal to five (5) percent of the amount due. The following service-specific rules, which conflict or are redundant with all or part of § 1.2107 of the Commission's rules, are modified or removed in whole or in part: §§ 21.955(a), (c); 21.958; 22.211(b); 22.213; 22.965(b); 24.706(b); 24.711(a)(2); 24.716(a)(2); 25.404(a), (b); 27.206; 73.3573(f)(5)(i); 73.5003(b)–(c); 74.1233(d)(5)(i); 90.807(b); 90.808; 90.907(b); 90.908; 90.1011(b); 90.1013; 100.76(b); 101.531; 101.1105(b); 101.1205(b); and 101.1206.

12. *Procedures for filing petitions to deny against long-form applications.* Section 1.2108 of the Commission's rules describes the timing and procedures for filing petitions to deny a winning bidder's long-form application. The period for filing a petition to deny commences after the Commission releases a public notice announcing that a long-form application has been accepted for filing. Section 1.2108 also provides that the length of time to file a petition to deny may vary on a service-specific basis, but cannot exceed ten (10) days. The following service-specific rules, which conflict or are redundant with all or part of § 1.2108 of the Commission's rules, are modified or removed: §§ 21.957; 90.1025(a); 101.1110; and 101.1207.

13. *License grant, denial, default, and disqualification.* Section 1.2109 of the Commission's rules addresses the consequences for a winning bidder that fails to timely make a down payment or full payment on its winning bid(s), withdraws its bid(s) after the auction has closed, violates the federal antitrust laws, or is otherwise found unqualified to be a licensee. The following service-specific rules, which conflict or are redundant with all or part of § 1.2109 of the Commission's rules, are modified or removed: §§ 21.959(c)–(e); 22.207; 22.215; 22.967; 24.708; 24.711(a)(2); 24.716(a)(2); 25.406; 27.208; 73.5004; 90.809(a); 90.909(a)–(b); 90.1015; and 100.78(a).

14. *Designated entities.* Section 1.2110 of the Commission's rules sets forth certain provisions applicable to designated entities—small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. This section also provides the eligibility criteria for small businesses, defines terms specific to designated entities, and addresses bidding credits and other financial incentives available to certain designated entities. The following service-specific rules, which are redundant with certain portions of § 1.2110 of the Commission's rules, are removed: §§ 21.955(b); 24.321(a)(7); 24.716(c); 27.210(b)(3)(ii), (c); 27.502(a)(7); 90.812(a); and 101.538(a)(8). The Bureau also modifies or removes the following service-specific rules in whole or in part because they conflict or are redundant with § 1.2110(b) of the Commission's rules, the part 1 eligibility criteria for small business status: §§ 21.961(b)(2); 22.223(b)(2)–(4); 24.321(a)(3)–(5); 24.709(a)(2); 24.720(b)(3)–(4); 27.210(b)(3); 27.502(a)(3)–(5); 80.1252(b)(3)–(4); 90.814(b)(2); 90.912(b)(3); 90.1021(b)(3); 90.1103(b)(3)–(4); 95.816(c)(3)–(4); 101.538(a)(5)–(6); and 101.1209(b)(2). The Bureau modifies the following service-specific rules by changing the term ''controlling principal'' to ''controlling interest'' to conform the rules with the Commission's general competitive bidding rules: §§ 90.912(b)(1)–(2); 90.913(a)(1); 90.1021(b)(1)–(2); 90.1023(a)(1); 101.1109(a)(1); and 101.1112(b)–(e). Additionally, the Bureau modifies or removes the following service-specific rules in whole or in part because they conflict or are redundant with certain portions of § 1.2110(c)(2) of the Commission's rules, the part 1 definition of ''controlling interest': §§ 22.223(e); 22.225(e); 24.321(b); 27.502(b); 80.1252(c); 90.814(g); 90.1103(c); 95.816(d); and 101.538(b). The Bureau also modifies § 24.709 to clarify its applicability to existing licensees.

15. *Assignment or transfer of control: unjust enrichment.* Section 1.2111 of the Commission's rules contains the procedures and reporting requirements for assigning or transferring licenses. This section also contains the rules for partitioning a license and disaggregating spectrum, including the related matters of unjust enrichment, bidding credits, installment payments, the length of the license term, and construction requirements. The following service-specific rules, which are redundant with all or part of § 1.2111 of the Commission's rules, are modified or removed in whole or in part: §§ 21.960(b)(5)(i)–(ii), (d)(1); 22.217(b); 24.711(c); 24.712(c); 24.714(c); 24.716(d); 24.717(c); 27.15(c); 27.209(d); 73.5009(a); 90.810(b); 90.812(b); 90.813(c), (d)(2)(i); 90.910(b); 90.911(c); 90.1017(b); 95.823(c)(1); 101.56(i); 101.535(a)(1), (c); 101.1107(e); 101.1208(b); 101.1319(c); and 101.1323(c).

16. *Ownership disclosure requirements for short- and long-form applications.* Section 1.2112 of the Commission's rules contains the Commission's ownership disclosure requirements for both the short-form application, which is a pre-requisite to participation in an auction, and the long-form application, which is filed by the winning bidder(s) to assist the Commission in determining whether the winning bidder is qualified to be a licensee. The Bureau modifies or removes §§ 22.225(b), 90.815(a)–(b), 90.913(a)–(b), 90.1023(a)–(b), and 101.1109(a)–(b) because these service-specific rules are redundant with the ownership disclosure requirements set forth in § 1.2112 of the Commission's rules. The Bureau also modifies § 73.5009(b) to indicate that the ownership disclosure requirements found at § 1.2112(a) do not apply to the assignment or transfer of licenses or construction permits in the broadcast services subject to competitive bidding.

17. *Definitions.* Section 1.2110 of the Commission's rules provides uniform definitions for ''affiliate,'' ''audits,'' ''businesses owned by members of minority groups and/or women,'' ''controlling interests,'' ''eligibility for small business provisions,'' ''gross revenues,'' and ''rural telephone company.'' The Bureau modifies or removes the following rules in whole or in part because they conflict or are redundant with § 1.2110(c)(5) of the Commission's rules, the part 1 definition of ''affiliate'': §§ 21.961(d); 22.223(d); 22.225(e); 24.709(g); 24.720(l); 27.210(d); 90.814(h); 90.815(e); 90.912(d); 90.913(d)(3); 90.1021(d); 90.1023(e); 90.1323(e); 101.1112(h); and 101.1209(e). The Bureau modifies the definition of ''audits'' in § 1.2110(m) to clarify that all applicants and licensees claiming designated entity status are subject to audits. Accordingly, the following service-specific rules, which are redundant with § 1.2110(m) of the Commission's rules, are removed: §§ 21.960(g); 22.225(d); 24.709(d); 90.815(d); 90.913(d); 90.1023(d); and 101.1109(d). The Bureau also removes

the following service-specific rules because they conflict or are redundant with § 1.2110(c)(3) of the Commission's rules, the part 1 definition for ''businesses owned by members of minority groups and/or women'': §§ 24.709(g); 24.720(i); 90.814(e)–(f); and 90.815(e). The Bureau removes the following service-specific rules in whole or in part because they conflict or are redundant with § 1.2110(n) of the Commission's rules, the part 1 definition of ''gross revenues'': §§ 21.961(c); 22.223(c); 22.225(e); 24.709(g); 24.720(f); 27.210(c); 90.814(d); 90.815(e); 90.912(c); 90.913(d)(3); 90.1021(c); 90.1023(e); 90.1323(e); 101.1112(g); and 101.1209(d). The Bureau also modifies or removes the following service-specific rules in whole or in part because they are redundant with § 1.2110(c)(4) of the Commission's rules, the part 1 definition of ''rural telephone company'': §§ 24.720(e); 90.814(c); and 101.1209(c). The Bureau also adds a definition of ''total assets'' to § 1.2110 of the Commission's rules to address the circumstances in which ''total assets'' information is relevant to the determination of whether an applicant (or licensee) is eligible for status as an entrepreneur. Accordingly, the Bureau deletes the redundant portions of the following service-specific rules that pertain to ''total assets'': §§ 24.709(g); 24.720(g); and 90.815(e).

18. *Technical/ministerial edits to Commission rules.* As a result of the conforming edits made in this Order, some of the service-specific competitive bidding rules refer to sections of the part 1 general competitive bidding rules that have been removed or modified. Accordingly, the Bureau modifies the following rules to eliminate or correct references to rules that have been removed or modified: §§ 1.2107(e); 1.2110(f)(3)(ii)(B), (f)(3)(iii)–(iv), (vii); 21.956(b)(3); 21.960(b)(4); 22.223(b)(3); 24.321(c)(1); 24.709; 24.711(b)–(b)(2); 24.712(a)–(b); 24.714(d)(1), (d)(2)(i), (iii), (d)(3)(i), (ii); 24.716(b)–(b)(2); 24.717(a)–(b); 24.720(b)(5), (c)(2), (j)(2), (k)(4), (n)(3)–(4); 27.15(d)–(e); 73.3571(h)(4)(i); 73.3573(f)(5)(ii); 73.5005(a); 73.5006(d); 80.1252(d); 90.705; 90.813(d)(2)(ii)–(iv), (3)(ii), (e), (f); 90.814(a)(3); 90.910(a); 90.1017(a); 90.1025(b); 90.1103(d); 95.816(e); 95.823(c)(2), (c)(2)(iii), (c)(3); 101.538(c); and 101.1319(b). Finally, the Bureau corrects errors in the following rules pursuant to its delegated authority under § 0.331(d) to make ministerial conforming edits: §§ 22.227; 24.711(b)(3)–(5); 73.5009; 90.809(b); 90.813(a); 90.909(c); 90.913(a); 95.816(f); and 101.538(a)(7).

IV. Ordering Clause

19. Parts 1, 21, 22, 24, 25, 27, 73, 74, 80, 90, 95, 100, and 101 of the Commission's rules are amended in accordance with the foregoing *Competitive Bidding Order* and as set forth and becomes effective August 8, 2002. This action is taken pursuant to the authority delegated by the Commission in the *Part 1 Fifth Report and Order*, 47 U.S.C. 155(c), and 47 CFR 0.131(c) and 0.331(d).

List of Subjects

47 CFR Parts 1 and 27

Communications common carriers.

47 CFR Parts 21, 22, 24, 25, 73, 74, 80, 90, 95, 100, and 101

Communications equipment.

Federal Communications Commission.

Kathleen O'Brien Ham,

Deputy Chief, Wireless Telecommunications Bureau.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 21, 22, 24, 25, 27, 73, 74, 80, 90, 95, 100, and 101 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Amend § 1.2107 by revising paragraph (e) to read as follows:

§ 1.2107 Submission of down payment and filing of long-form applications.

* * * * *

(e) A winning bidder that seeks a bidding credit to serve a qualifying tribal land, as defined in § 1.2110(f)(3)(i), within a particular market must indicate on the long-form application (FCC Form 601) that it intends to serve a qualifying tribal land within that market.

* * * * *

3. Amend § 1.2110 by revising paragraphs (b) introductory text, (b)(1), (f)(3)(ii)(B), (f)(3)(iii), (f)(3)(iv), (f)(3)(vii), and (m)(1) and adding new paragraph (o) to read as follows:

§ 1.2110 Designated entities.

* * * * *

(b) Eligibility for small business and entrepreneur provisions.

(1) *Size attribution.* (i) The gross revenues of the applicant (or licensee), its controlling interests and their affiliates shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as a small business. An applicant seeking status as a small business must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues of the applicant (or licensee), its controlling interests and their affiliates for each of the previous three years.

(ii) If applicable, the total assets of the applicant (or licensee), its controlling interests and their affiliates shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as an entrepreneur. An applicant seeking status as an entrepreneur must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues of the applicant (or licensee), its controlling interests and their affiliates for each of the previous two years.

* * * * *

(f) * * *

(3) * * *

(ii) * * *

(B) In addition, within ninety (90) days after the filing deadline for long-form applications, the winning bidder must amend its long-form application and file a certification that it will comply with the buildout requirements set forth in § 1.2110(f)(vi) and consult with the tribal government regarding the siting of facilities and deployment of service on the tribal land.

(iii) *Bidding credit formula.* Subject to the applicable bidding credit limit set forth in § 1.2110(f)(3)(iv), the bidding credit shall equal three hundred thousand (300,000) dollars for the first two hundred (200) square miles (518 square kilometers) of qualifying tribal land, and fifteen hundred (1500) dollars for each additional square mile (2.590 square kilometers) of qualifying tribal land above two hundred (200) square miles (518 square kilometers).

(iv) *Bidding credit limit.* If the high bid is equal to or less than one million (1,000,000) dollars, the maximum bidding credit calculated pursuant to § 1.2110(f)(3)(iii) shall not exceed fifty (50) percent of the high bid. If the high bid is greater than one million (1,000,000) dollars, but equal to or less than two million (2,000,000) dollars, the maximum bidding credit calculated pursuant to § 1.2110(f)(3)(iii) shall not exceed five hundred thousand (500,000) dollars. If the high bid is greater than two million (2,000,000) dollars, the

maximum bidding credit calculated pursuant to § 1.2110(f)(3)(iii) shall not exceed twenty-five (25) percent of the high bid.

* * * * *

(vii) *Performance penalties*. If a recipient of a bidding credit under this section fails to provide the post-construction certification required by § 1.2110(f)(3)(vi), then it shall repay the bidding credit amount in its entirety, plus interest. The interest will be based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted. Such payment shall be made within thirty (30) days of the third anniversary of the initial grant of its license.

* * * * *

(m) * * *

(1) Applicants and licensees claiming eligibility shall be subject to audits by the Commission, using in-house and contract resources. Selection for audit may be random, on information, or on the basis of other factors.

* * * * *

(o) *Total assets.* Total assets shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of all property owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recently audited financial statements or certified by the applicant's chief financial offer or its equivalent if the applicant does not otherwise use audited financial statements.

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

4. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

5. Revise § 21.950 to read as follows:

§ 21.950 MDS subject to competitive bidding.

Mutually exclusive initial applications for MDS licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

§ 21.951 through § 21.953 [Removed and Reserved]

6. Remove and reserve § 21.951 through § 21.953.

7. Revise § 21.954 to read as follows:

§ 21.954 Submission of upfront payments.

Applicants who are small businesses eligible for reduced upfront payments will be required to submit an upfront payment amount in accordance with § 21.960(c).

§ 21.955 [Removed and Reserved]

8. Remove and reserve § 21.955.

9. Amend § 21.956 by revising paragraph (b)(3) to read as follows:

§ 21.956 Filing of long-form applications or statements of intention.

* * * * *

(b) * * *

(3) An exhibit complying with §§ 1.2110(j) of this chapter and 21.960(e), if the winning bidder submitting the long-from application or statement of intention claims status as a designated entity.

* * * * *

10. Revise § 21.957 to read as follows:

§ 21.957 Comments on statements of intention.

In addition to the provisions of § 21.30, parties wishing to comment or oppose the issuance of a BTA authorization in connection with the filing of a statement of intention by a winning bidder must do so prior to the Commission's issuance of the BTA authorization.

11. Revise § 21.958 to read as follows:

§ 21.958 Issuance of BTA licenses.

A winning bidder who submitted a long-form application for an MDS station license within its BTA service area pursuant to § 21.956(a) will receive its BTA authorization concurrent with the grant of its MDS conditional station license within its BTA service area. A winning bidder who submitted a statement of intention with regard to its BTA service area pursuant to § 21.956(a) will receive its BTA authorization following the Commission's review of its statement of intention. The Commission will issue a BTA authorization to a winning bidder within ten (10) business days following notification of receipt of full payment of the amount of the winning bid.

§ 21.959 [Removed and Reserved]

12. Remove and reserve § 21.959.

13. Amend § 21.960 by revising paragraph (b)(5) and removing paragraphs (d)(1), (d)(2) and (g) to read as follows:

§ 21.960 Designated entity provisions for MDS.

* * * * *

(b) * * *

(5) Unjust enrichment. If an eligible BTA authorization holder that utilizes installment financing under this subsection seeks to partition, pursuant to § 21.931, a portion of its BTA containing one-third or more of the population of the area within its control in the licensed BTA to an entity not meeting the eligibility standards for installment payments, the holder must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of partition as a condition of approval.

* * * * *

§ 21.961 [Amended]

14. Amend § 21.961 by removing paragraphs (b)(2), (c) and (d) and by redesignating paragraph (b)(3) as (b)(2).

PART 22—PUBLIC MOBILE SERVICES

15. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

16. Revise § 22.201 to read as follows:

§ 22.201 Paging geographic area authorizations are subject to competitive bidding.

Mutually exclusive initial applications for paging geographic area licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart and part 90 of this chapter.

§ 22.203 through § 22.211 [Removed and Reserved]

17. Remove and reserve § 22.203 and § 22.211.

18. Revise § 22.213 to read as follows:

§ 22.213 Filing of long-form applications.

After an auction, the Commission will not accept long form applications for paging geographic authorizations from anyone other than the auction winners and parties seeking partitioned authorizations pursuant to agreements with auction winners under § 22.221.

§ 22.215 [Removed and Reserved]

19. Remove and reserve § 22.215.

20. Revise § 22.217 to read as follows:

§ 22.217 Bidding credit for small businesses.

A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 22.223(b)(1)(i) may use a bidding credit of thirty-five (35) percent to lower the cost of its winning bid. A winning bidder that qualifies as a small business or consortium of small businesses as defined in § 22.223(b)(1)(ii) may use a bidding credit of twenty-five (25)

percent to lower the cost of its winning bid.

21. Amend § 22.223 by removing paragraphs (b)(2), (b)(4), (c), (d) and (e), redesignating paragraph (b)(3) as (b)(2) and by revising newly redesignated paragraph (b)(2) to read as follows:

§ 22.223 Definitions concerning competitive bidding process.

* * * * *

(b) * * *

(2) A consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a small business in paragraph (b)(1)(i) or (b)(1)(ii) of this section. Each individual member must establish its eligibility as a small business, as defined in this section.

22. Revise § 22.225 to read as follows:

§ 22.225 Certifications, disclosures, records maintenance, and definitions.

(a) *Short-form applications: certifications and disclosure.* In addition to certifications and disclosures required by part 1, subpart Q of this chapter, each applicant for a paging license which qualifies as a small business or consortium of small businesses shall append the following information as an exhibit to its FCC Form 175: the identity of the applicant's controlling interest and affiliates, and, if a consortium of small businesses, the members of the joint venture.

(b) *Records maintenance.* All winning bidders qualifying as small businesses shall maintain at their principal place of business an updated file of ownership, revenue, and asset information, including any documents necessary to establish small businesses under § 22.223. Licensees (and their successors-in-interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (FCC Form 175), whichever is earlier.

(c) *Definitions.* The terms small business and consortium of small businesses used in this section are defined in § 22.223.

23. Revise § 22.227 to read as follows:

§ 22.227 Petitions to deny and limitations on settlements.

(a) Procedures regarding petitions to deny long-form applications in the paging service will be governed by § 1.939 of this chapter.

(b) The consideration that an individual or an entity will be permitted to receive for agreeing to withdraw an application or petition to deny will be limited by the provisions set forth in § 1.935 of this chapter.

24. Revise § 22.228 to read as follows:

§ 22.228 Cellular rural service area licenses subject to competitive bidding.

Mutually exclusive initial applications for Cellular Rural Service Area licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

25. Revise § 22.960 to read as follows:

§ 22.960 Cellular unserved area radiotelephone licenses subject to competitive bidding.

Mutually exclusive initial applications for cellular unserved area Phase I and Phase II licenses filed after July 26, 1993 are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§§ 22.961 through 22.967 [Removed and Reserved]

26. Remove and reserve §§ 22.961 through 22.967.

PART 24—PERSONAL COMMUNICATIONS SERVICES

27. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

28. Revise § 24.301 to read as follows:

§ 24.301 Narrowband PCS subject to competitive bidding.

Mutually exclusive initial applications for narrowband PCS service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

29. Revise § 24.321 to read as follows:

§ 24.321 Designated entities.

(a) *Eligibility for small business provisions.* (1) A small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $ 40 million for the preceding three years.

(2) A very small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $ 15 million for the preceding three years.

(3) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section (or each of which individually satisfies the definition in paragraph (a)(2) of this section). Where an applicant or licensee is a consortium of small businesses (or very small businesses), the gross revenues of each small business (or very small business) shall not be aggregated.

(b) *Bidding credits.* (1) After August 7, 2000, a winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter.

(2)(i) Businesses owned by members of minority groups and women, including small businesses owned by members of minority groups and women, that are winning bidders on nationwide licenses on Channel 5, Channel 8, and Channel 11 prior to August 7, 2000 will be eligible for a twenty-five (25) percent bidding credit.

(ii) Businesses owned by members of minority groups and women, including small businesses owned by members of minority groups and women, that are winning bidders on regional licenses on Channel 13 and Channel 17 prior to August 7, 2000 will be eligible for a forty (40) percent bidding credit.

(c) *Installment payments.* Small businesses, including small businesses owned by members of minority groups and women, that are winning bidders on any regional license prior to August 7, 2000 will be eligible to pay the full amount of their winning bids in installments over the term of the license pursuant to the terms set forth in § 1.2110(g) of this chapter.

30. Revise § 24.701 to read as follows:

§ 24.701 Broadband PCS subject to competitive bidding.

Mutually exclusive initial applications for broadband PCS service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 24.702 [Removed and Reserved]

31. Remove and reserve § 24.702.

§ 24.704 [Removed and Reserved]

32. Remove and reserve § 24.704.

§ 24.706 [Removed and Reserved]

33. Remove and reserve § 24.706.

§ 24.708 [Removed and Reserved]

34. Remove and reserve § 24.708.

35. Revise § 24.709 to read as follows:

§ 24.709 Eligibility for licenses for frequency Blocks C or F.

(a) *General rule for licenses offered for closed bidding.* (1) No application is acceptable for filing and no license shall be granted to a winning bidder in closed bidding for frequency block C or frequency block F, unless the applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, have had gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million at the time the applicant's short-form application (Form 175) is filed.

(2) Any licensee awarded a license won in closed bidding pursuant to the eligibility requirements of this section (or pursuant to § 24.839(a)(2)) shall maintain its eligibility until at least five years from the date of initial license grant, except that a licensee's (or other attributable entity's) increased gross revenues or increased total assets due to nonattributable equity investments (i.e., from sources whose gross revenues and total assets are not considered under paragraph (b) of this section), debt financing, revenue from operations or other investments, business development, or expanded service shall not be considered.

(3) Tiers. (i) For purposes of determining spectrum to which the eligibility requirements of this section are applicable, the BTA service areas (see § 24.202(b)) are divided into two tiers according to their population as follows:

(A) *Tier 1:* BTA service areas with population equal to or greater than 2.5 million;

(B) *Tier 2:* BTA service areas with population less than 2.5 million.

(ii) For Auction No. 35, the population of individual BTA service areas will be based on the 1990 census. For auctions beginning after the start of Auction No. 35, the population of individual BTA service areas will be based on the most recent available decennial census.

(4) Application of eligibility requirements. (i) The following categories of licenses will be subject to closed bidding pursuant to the eligibility requirements of this section in auctions that begin after the effective date of this paragraph.

(A) For Tier 1 BTAs, one of the 10 MHz C block licenses (1895–1900 MHz paired with 1975–1980 MHz);

(B) For Tier 2 BTAs, two of the 10 MHz C block licenses (1895–1900 MHz paired with 1975–1980 MHz; 1900–1905 MHz paired with 1980–1985 MHz) and all 15 MHz C block licenses.

(ii) Notwithstanding the provisions of paragraph (a)(4)(i) of this section, any C block license for operation on spectrum that has been offered, but not won by a bidder, in closed bidding in any auction beginning on or after March 23, 1999, will not be subject in a subsequent auction to closed bidding pursuant to the eligibility requirements of this section.

(5) Special rule for licensees disaggregating or returning certain spectrum in frequency block C.

(i) In addition to entities qualifying for closed bidding under paragraph (a)(1) of this section, any entity that was eligible for and participated in the auction for frequency block C, which began on December 18, 1995, or the reauction for frequency block C, which began on July 3, 1996, will be eligible to bid for C block licenses offered in closed bidding in any reauction of frequency block C spectrum that begins within two years of March 23, 1999.

(ii) In cases of merger, acquisition, or other business combination of entities, where each of the entities is eligible to bid for C block licenses offered in closed bidding in any reauction of C block spectrum on the basis of the eligibility exception set forth in paragraph (a)(5)(i) of this section, the resulting entity will also be eligible for the exception specified in paragraph (a)(5)(i) of this section.

(iii) In cases of merger, acquisition, or other business combination of entities, where one or more of the entities are ineligible for the exception set forth in paragraph (a)(5)(i) of this section, the resulting entity will not be eligible pursuant to paragraph (a)(5)(i) of this section unless an eligible entity possesses *de jure* and *de facto* control over the resulting entity.

(iv) The following restrictions will apply for any reauction of frequency block C spectrum conducted after March 24, 1998:

(A) Applicants that elected to disaggregate and surrender to the Commission 15 MHz of spectrum from any or all of their frequency block C licenses, as provided in Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 97–82, 12 FCC Rcd 16,436 (1997), as modified by the Order on Reconsideration of the Second Report and Order, WT Docket No. 97–82, FCC 98–46 (rel. Mar. 24, 1998), will not be eligible to apply for such disaggregated spectrum until 2 years from the start of the reauction of that spectrum.

(B) Applicants that surrendered to the Commission any of their frequency block C licenses, as provided in Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 97–82, 12 FCC Rcd 16,436 (1997), as modified by the Order on Reconsideration of the Second Report and Order, WT Docket No. 97–82, FCC 98–46 (rel. Mar. 24, 1998), will not be eligible to apply for the licenses that they surrendered to the Commission until 2 years from the start of the reauction of those licenses if they elected to apply a credit of 70% of the down payment they made on those licenses toward the prepayment of licenses they did not surrender.

(b) *Exceptions to general rule.*

(1) *Scope.* The following provisions apply to licenses acquired in Auctions No. 5, 10, 11 or 22, or pursuant to § 24.839(a)(2) or (a)(3) prior to October 30, 2000.

(i) *Small business consortia.* Where an applicant (or licensee) is a consortium of small businesses, the gross revenues and total assets of each small business shall not be aggregated.

(ii) *Publicly-traded corporations.* Where an applicant (or licensee) is a publicly traded corporation with widely dispersed voting power, the gross revenues and total assets of a person or entity that holds an interest in the applicant (or licensee), and its affiliates, shall not be considered.

(iii) *25 Percent equity exception.* The gross revenues and total assets of a person or entity that holds an interest in the applicant (or licensee), and its affiliates, shall not be considered so long as:

(A) Such person or entity, together with its *affiliates,* holds only *nonattributable equity* equaling no more than 25 percent of the applicant's (or licensee's) total equity;

(B) Except as provided in paragraph (b)(1)(v) of this section, such person or entity is not a member of the applicant's (or licensee's) *control group;* and

(C) The applicant (or licensee) has a *control group* that complies with the minimum equity requirements of paragraph (b)(1)(v) of this section, and, if the applicant (or licensee) is a

corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(iv) *49.9 Percent equity exception.* The *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its affiliates, shall not be considered so long as:

(A) Such person or entity, together with its *affiliates,* holds only *nonattributable equity* equaling no more than 49.9 percent of the applicant's (or licensee's) total equity;

(B) Except as provided in paragraph (b)(1)(vi) of this section, such person or entity is not a member of the applicant's (or licensee's) *control group;* and

(C) The applicant (or licensee) has a *control group* that complies with the minimum equity requirements of paragraph (b)(1)(vi) of this section and, if the applicant (or licensee) is a corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(v) *Control group minimum 25 percent equity requirement.* In order to be eligible to exclude gross revenues and total assets of persons or entities identified in paragraph (b)(1)(iii) of this section, and applicant (or licensee) must comply with the following requirements:

(A) Except for an applicant (or licensee) whose sole control group member is a *preexisting entity,* as provided in paragraph (b)(1)(v)(B) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) control group must own at least 25 percent of the applicant's (or licensee's) total equity as follows:

(*1*) At least 15 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors,* either unconditionally or in the form of options exercisable, at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(*2*) Such *qualifying investors* must hold 50.1 percent of the voting stock and all general partnership interests within the control group, and must have de facto control of the control group and of the applicant;

(*3*) The remaining 10 percent of the applicant's (or licensee's) total equity may be owned, either unconditionally or in the form of stock options, by any of the following entities, which may not comply with § 24.720(i)(1):

(*i*) *Institutional Investors;*

(*ii*) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group;*

(*iii*) Individuals that are members of the applicant's (or licensee's) management; or

(*iv*) *Qualifying investors,* as specified in § 24.720(i)(4).

(*4*) Following termination of the three-year period specified in paragraph (b)(1)(v)(A) of this section, *qualifying investors* must continue to own at least 10 percent of the applicant's (or licensee's) total equity unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(1)(v)(A)(*1*) of this section. The restrictions specified in paragraphs (b)(1)(v)(A)(*3*)(*i*) through (b)(1)(v)(A)(*3*)(*iv*) of this section no longer apply to the remaining equity after termination of such three-year period.

(B) At the election of an applicant (or licensee) whose *control group's* sole member is a preexisting entity, the 25 percent minimum equity requirements set forth in paragraph (b)(1)(v)(A) of this section shall apply, except that only 10 percent of the applicant's (or licensee's) total equity must be held in *qualifying investors,* and that the remaining 15 percent of the applicant's (or licensee's) total equity may be held by *qualifying investors,* or noncontrolling *existing investors* in such *control group* member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 15 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(1)(v)(A) of this section.

(vi) *Control group minimum 50.1 percent equity requirement.* In order to be eligible to exclude *gross revenues* and *total assets* of persons or entities identified in paragraph (b)(1)(iv) of this section, an applicant (or licensee) must comply with the following requirements:

(A) Except for an applicant (or licenses) whose sole control group member is a *preexisting entity,* as provided in paragraph (b)(1)(vi)(B) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) *control group* must own at least 50.1 percent of the applicant's (or licensee's) total equity as follows:

(*1*) At least 30 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors,* either unconditionally or in the form of options, exercisable at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(*2*) Such *qualifying investors* must hold 50.1 percent of the voting stock and all general partnership interests within the control group and must have *de facto* control of the control group and of the applicant;

(*3*) The remaining 20.1 percent of the applicant's (or licensee's) total equity may be owned by *qualifying investors,* either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(1)(vi)(A)(*1*) of this section, or by any of the following entities which may not comply with § 24.720(i)(1):

(*i*) *Institutional investors,* either unconditionally or in the form of stock options;

(*ii*) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group,* either unconditionally or in the form of stock options;

(*iii*) Individuals that are members of the applicant's (or licensee's) management, either unconditionally or in the form of stock options; or

(*iv) Qualifying investors,* as specified in § 24.720(i)(4).

(*4*) Following termination of the three-year period specified in paragraph (b)(1)(vi)(A) of this section, *qualifying investors* must continue to own at least 20 percent of the applicant's (or licensee's) total equity unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(1)(vi)(A)(*1*) of this section. The restrictions specified in paragraph (b)(1)(vi)(A)(*3*)(*i*) through (b)(1)(vi)(A)(*3*)(*iv*) of this section no longer apply to the remaining equity after termination of such three-year period.

(B) At the election of an applicant (or licensee) whose *control group's* sole member is a *preexisting entity,* the 50.1 percent minimum equity requirements set forth in paragraph (b)(1)(vi)(A) of this section shall apply, except that only 20 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors,* and that the remaining 30.1 percent of the applicant's (or licensee's) total equity may be held by *qualifying investors,* or noncontrolling existing investors in such *control group* member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 30.1 percent

of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(1)(vi)(A) of this section.

(vii) *Calculation of certain interests.* Except as provided in paragraphs (b)(1)(v) and (b)(1)(vi) of this section, ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that such agreements may not be used to appear to terminate or divest ownership interests before they actually do so, in order to comply with the *nonattributable equity* requirements in paragraphs (b)(1)(iii)(A) and (b)(1)(iv)(A) of this section.

(viii) *Aggregation of affiliate interests.* Persons or entities that hold interest in an applicant (or licensee) that are affiliates of each other or have an identify of interests identified in § 1.2110(c)(5)(iii) will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the nonattributable equity requirements in paragraphs (b)(1)(iii)(A) and (b)(1)(iv)(A) of this section.

Example 1 for paragraph (b)(1)(viii). ABC Corp. is owned by individuals, A, B, and C, each having an equal one-third voting interest in ABC Corp. A and B together, with two-thirds of the stock have the power to control ABC Corp. and have an identity of interest. If A & B invest in DE Corp., a broadband PCS applicant for block C, A and B's separate interests in DE Corp. must be aggregated because A and B are to be treated as one person.

Example 2 for paragraph (b)(1)(viii). ABC Corp. has subsidiary BC Corp., of which it holds a controlling 51 percent of the stock. If ABC Corp. and BC Corp., both invest in DE Corp., their separate interests in DE Corp. must be aggregated because ABC Corp. and BC Corp. are affiliates of each other.

(2) *The following provisions apply to licenses acquired pursuant to § 24.839(a)(2) or (a)(3) on or after October 30, 2000.* In addition to the eligibility requirements set forth at 24.709(a) and (b), applicants and/or licensees seeking to acquire C and/or F block licenses pursuant to 24.839(a)(2) or (a)(3) will be subject to the controlling interest standard in 1.2110(c)(2) of this chapter for purposes of determining unjust enrichment payment obligations. See § 1.2111 of this chapter.

(c) *Short-form and long-form applications: Certifications and disclosure.*

(1) *Short-form application.* In addition to certifications and disclosures required by part 1, subpart Q of this chapter, each applicant to participate in closed bidding for frequency block C or frequency block F shall certify on its short-form application (Form 175) that it is eligible to bid on and obtain such license(s), and (if applicable) that it is eligible for designated entity status pursuant to this section and § 24.720, and shall append the following information as an exhibit to its Form 175:

(i) *For all applicants:* The applicant's gross revenues and total assets, computed in accordance with paragraphs (a) of this section and § 1.2110(b)(1) through (b)(2) of this chapter.

(ii) For all applicants that participated in Auction Nos. 5, 10, 11, and/or 22:

(A) The identity of each member of the applicant's *control group,* regardless of the size of each member's total interest in the applicant, and the percentage and type of interest held;

(B) The citizenship and the gender or minority group classification for each member of the applicant's *control group* if the applicant is claiming status as a *business owned by members of minority groups and/or women;*

(C) The status of each *control group* member that is an *institutional investor,* an *existing investor,* and/or a member of the applicant's management;

(D) The identify of each *affiliate* of the applicant and each affiliate of individuals or entities identified pursuant to paragraphs (c)(1)(ii)(A) and (c)(1)(ii)(C) of this section;

(E) A certification that the applicant's sole *control group* member is a *preexisting entity,* if the applicant makes the election in either paragraph (b)(1)(v)(B) or (b)(1)(vi)(B)of this section; and

(F) For an applicant that is a *publicly traded corporation with widely disbursed voting power:*

(*1*) A certified statement that such applicant complies with the requirements of the definition of *publicly traded corporation with widely disbursed voting power* set forth in § 24.720(h);

(*2*) The identify of each *affiliate* of the applicant.

(iii) For each applicant claiming status as a *small business consortium,* the information specified in paragraph (c)(1)(ii) of this section, for each member of such consortium.

(2) *Long-form application.* In addition to the requirements in subpart I of this part and other applicable rules (e.g., §§ 20.6(e) and 20.9(b) of this chapter), each applicant submitting a long-form application for a license(s) for frequency block C or F shall in an exhibit to its long-form application:

(i) Disclose separately and in the aggregate the *gross revenues* and *total assets,* computed in accordance with paragraphs (a) and (b) of this section, for each of the following: The applicant; the applicant's *affiliates,* the applicant's *control group* members; the applicant's attributable investors; and *affiliates* of its attributable investors;

(ii) List and summarize all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility for a license(s) for frequency block C or frequency block F and its eligibility under §§ 24.711, 24.712, 24.714 and 24.720, including the establishment of *de facto* and *de jure* control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, partnership agreements, management agreements, joint marketing agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

(iii) List and summarize any investor protection agreements and identify specifically any such provisions in those agreements identified pursuant to paragraph (c)(2)(ii) of this section, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees.

(3) *Records maintenance.* All applicants, including those that are winning bidders, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including those documents referenced in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section and any other documents necessary to establish eligibility under this section or under the definitions *of small business and/or business owned by members of minority groups and/or women.* Licensees (and their successors in interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (Form 175), whichever is earlier.

(d) *Definitions.* The terms consortium of small businesses, control group, existing investor, institutional investor, nonattributable equity, preexisting entity, publicly traded corporation with

widely dispersed voting power, qualifying investor, and small business used in this section are defined in § 24.720.

36. Revise § 24.711 to read as follows:

§ 24.711 Installment payments for licenses for frequency Block C.

Installment payments. Each eligible licensee of frequency Block C may pay the remaining 90 percent of the net auction price for the license in installment payments pursuant to § 1.2110(f) of this chapter and under the following terms:

(a) For an eligible licensee with gross revenues exceeding $75 million (calculated in accordance with § 1.2110(b) of this chapter and § 24.709(b)) in each of the two preceding years (calculated in accordance with § 1.2110(o) of this chapter), interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 3.5 percent; payments shall include both principal and interest amortized over the term of the license.

(b) For an eligible licensee with gross revenues not exceeding $75 million (calculated in accordance with § 1.2110(b) of this chapter and § 24.709(b)) in each of the two preceding years, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first year and payments of interest and principal amortized over the remaining nine years of the license term.

(c) For an eligible licensee that qualifies as a small business or as a consortium of small businesses, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first six years and payments of interest and principal amortized over the remaining four years of the license term.

37. Revise 24.712 to read as follows:

§ 24.712 Bidding credits for licenses won for frequency Block C.

(a) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 24.720(b)(1) or § 24.720(b)(3) may use a bidding credit of fifteen percent, as specified in § 1.2110(f)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 24.720(b)(2) or § 24.720(b)(4) may use a bidding credit of twenty-five percent as specified in § 1.2110(f)(2)(ii) of this chapter, to lower the cost of its winning bid.

(c) *Unjust enrichment.* The unjust enrichment provisions of § 1.2111(d) and (e)(2) of this chapter shall not apply with respect to licenses acquired in either the auction for frequency block C that began on December 18, 1995, or the reauction of block C spectrum that began on July 3, 1996.

38. Amend § 24.714 by removing paragraph (c), redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e) and revising newly redesignated paragraphs (c)(1), (c)(2)(i), (c)(2)(iii), (c)(3)(i), and (c)(3)(ii) to read as follows:

§ 24.714 Partitioned licenses and disaggregated spectrum.

* * * * *

(c) * * *

(1) *Apportioning the balance on installment payment plans.* When a winning bidder elects to pay for its license through an installment payment plan pursuant to §§ 1.2110(g) of this chapter or 24.716, and partitions its licensed area or disaggregates spectrum to another party, the outstanding balance owed by the licensee on its installment payment plan (including accrued and unpaid interest) shall be apportioned between the licensee and partitionee or disaggregatee. Both parties will be responsible for paying their proportionate share of the outstanding balance to the U.S. Treasury. In the case of partitioning, the balance shall be apportioned based upon the ratio of the population of the partitioned area to the population of the entire original license area calculated based upon the most recent census data. In the case of disaggregation, the balance shall be apportioned based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum allocated to the licensed area.

(2) * * *

(i) When a winning bidder elects to pay for its license through an installment payment plan, and partitions its license or disaggregates spectrum to another party that would not qualify for an installment payment plan or elects not to pay its share of the license through installment payments, the outstanding balance owed by the licensee (including accrued and unpaid interest shall be apportioned according to § 24.714(c)(1)).

* * * * *

(iii) The licensee shall be permitted to continue to pay its pro rata share of the outstanding balance and shall receive new financing documents (promissory note, security agreement) with a revised payment obligation, based on the remaining amount of time on the original installment payment schedule. These financing documents will replace the licensee's existing financing documents, which shall be marked ''superseded'' and returned to the licensee upon receipt of the new financing documents. The original interest rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to the licensee's portion of the remaining government obligation. The Bureau will require, as a further condition to approval of the partial assignment application, that the licensee execute and return to the U.S. Treasury the new financing documents within 30 days of the Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in the automatic cancellation of the grant of the partial assignment application.

* * * * *

(3) * * *

(i) Where both parties to a partitioning or disaggregation agreement qualify for installment payments, the partitionee or disaggregatee will be permitted to make installment payments on its portion of the remaining government obligations, as calculated according to § 24.714(c)(1).

(ii) Each party will be required, as a condition to approval of the partial assignment application, to execute separate financing documents (promissory note, security agreement) agreeing to pay their pro rata portion of the balance due (including accrued and unpaid interest) based upon the installment payment terms for which they qualify under the rules. The financing documents must be returned to the U.S. Treasury within thirty (30) days of the Public Notice conditionally granting the partial assignment application. Failure by either party to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The interest rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to both parties' portion of the balance due. Each party will receive a license for their portion of the partitioned market or disaggregated spectrum.

* * * * *

39. Revise § 24.716 to read as follows:

§ 24.716 Installment payments for licenses for frequency Block F.

Installment Payments. Each eligible licensee of frequency Block F may pay the remaining 80 percent of the net auction price for the license in installment payments pursuant to § 1.2110(g) of this chapter and under the following terms:

(a) For an eligible licensee with gross revenues exceeding $75 million (calculated in accordance with § 1.2110(b) of this chapter and, when applicable, § 24.709(b)) in each of the two preceding years (calculated in accordance with § 1.2110(o) of this chapter), interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 3.5 percent; payments shall include both principal and interest amortized over the term of the license;

(b) For an eligible licensee with gross revenues not exceeding $75 million (calculated in accordance with § 1.2110(b) of this chapter and, when applicable, § 24.709(b)) in each of the two preceding years (calculated in accordance with § 1.2110(o) of this chapter), interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first year and payments of interest and principal amortized over the remaining nine years of the license term; or

(c) For an eligible licensee that qualifies as a small business or as a consortium of small businesses, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first two years and payments of interest and principal amortized over the remaining eight years of the license term.

40. Revise § 24.717 to read as follows:

§ 24.717 Bidding credits for licenses for frequency Block F.

(a) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 24.720(b)(1) or § 24.720(b)(3) may use a bidding credit of fifteen percent, as specified in § 1.2110(f)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 24.720(b)(2) or § 24.720(b)(4) may use a bidding credit of twenty-five percent as specified in § 1.2110(f)(2)(ii) of this chapter, to lower the cost of its winning bid.

41. Revise § 24.720 to read as follows:

§ 24.720 Definitions.

(a) *Scope.* The definitions in this section apply to §§ 24.709 through 24.717, unless otherwise specified in those sections.

(b) *Small business; very small business; consortia.*

(1) A *small business* is an entity that, together with its *affiliates* and persons or entities that hold interest in such entity and their *affiliates*, has average annual *gross revenues* that are not more than $40 million for the preceding three years.

(2) A *very small business* is an entity that, together with its *affiliates* and persons or entities that hold interests in such entity and their *affiliates,* has average annual *gross revenues* that are not more than $15 million for the preceding three years.

(3) A *small business consortium* is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a *small business* in paragraph (b)(1) of this section.

(4) A *very small business consortium* is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a *very small business* in paragraph (b)(2) of this section.

(c) *Business Owned by Members of Minority Groups and/or Women. A business owned by members of minority groups and/or women* is an entity:

(1) In which the *qualifying investor* members of an applicant's *control group* are members of minority groups and/or women who are United States citizens; and

(2) That complies with the requirements of §§ 24.709(b)(1)(iii) and (b)(1)(v) or § 24.709(b)(1)(iv) and (b)(vi).

(d) *Small Business Owned by Members of Minority Groups and/or Women: Consortium of Small Businesses Owned by Members of Minority and/or Women.* A Small business owned by members of minority groups and/or women is an entity that meets the definitions in both paragraphs (b) and (c) of this section. A *consortium of small businesses owned by members of minority groups and/or women* is a conglomerate organization formed as a joint venture between mutually-independent business firms, each of which individually satisfies the definitions in paragraphs (b) and (c) of this section.

(e) *Institutional Investor.* An *institutional investor* is an insurance company, a bank holding stock in trust accounts through its trust department, or an investment company as defined in 15 U.S.C. 80a–3(a), including within such definition any entity that would otherwise meet the definition of investment company under 15 U.S.C. 80a–3(a) but is excluded by the exemptions set forth in 15 U.S.C. 80a–3(b) and (c), without regard to whether such entity is an issuer of securities; provided that, if such investment company is owned, in whole or in part, by other entities, such investment company, such other entities and the *affiliates* of such other entities, taken as a whole, must be primarily engaged in the business of investing, reinvesting or trading in securities or in distributing or providing investment management services for securities.

(f) *Nonattributable Equity.* (1) *Nonattributable equity* shall mean:

(i) For corporations, voting stock or non-voting stock that includes no more than twenty-five percent of the total voting equity, including the right to vote such stock through a voting trust or other arrangement;

(ii) For partnerships, joint ventures and other non-corporate entities, limited partnership interests and similar interests that do not afford the power to exercise control of the entity.

(2) For purposes of assessing compliance with the equity limits in §§ 24.709 (b)(1)(iii)(A) and (b)(1)(iv)(A), where such interests are not held directly in the applicant, the total equity held by a person or entity shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

(g) *Control Group.* A *control group* is an entity, or a group of individuals or entities, that possesses *de jure* control and *de facto* control of an applicant or licensee, and as to which the applicant's or licensee's charters, bylaws, agreements and any other relevant documents (and amendments thereto) provide:

(1) That the entity and/or its members own unconditionally at least 50.1 percent of the total voting interests of a corporation;

(2) That the entity and/or its members receive at least 50.1 percent of the annual distribution or any dividends paid on the voting stock of a corporation;

(3) That, in the event of dissolution or liquidation of a corporation, the entity and/or its members are entitled to

receive 100 percent of the value of each share of stock in its possession and a percentage of the retained earnings of the concern that is equivalent to the amount of equity held in the corporation; and

(4) That, for other types of businesses, the entity and/or its members have the right to receive dividends, profits and regular and liquidating distributions from the business in proportion to the amount of equity held in the business.

Note to Paragraph (g): Voting control does not always assure *de facto* control, such as for example, when the voting stock of the control group is widely dispersed (see e.g., § 1.2110(c)(5)(ii)(C) of this chapter).

(h) *Publicly Traded Corporation with Widely Dispersed Voting Power.* A publicly traded corporation with widely dispersed voting power is a business entity organized under the laws of the United States:

(1) Whose shares, debt, or other ownership interests are traded on an organized securities exchange within the United States;

(2) In which no person:

(i) Owns more than 15 percent of the equity; or

(ii) Possesses, directly or indirectly, through the ownership of voting securities, by contract or otherwise, the power to control the election of more than 15 percent of the members of the board of directors or other governing body of such publicly traded corporation; and

(3) Over which no person other than the management and members of the board of directors or other governing body of such publicly traded corporation, in their capacities as such, has *de facto* control.

(4) The term *person* shall be defined as in section 13(d) of the Securities and Exchange Act of 1934, as amended (15 U.S.C. 78(m)), and shall also include investors that are commonly controlled under the indicia of control set forth in the definition of affiliate in § 1.2110(c)(5) of the Commission's rules.

(i) *Qualifying Investor; Qualifying Minority and/or Woman Investor.*

(1) A *qualifying investor* is a person who is (or holds an interest in) a member of the applicant's (or licensee's) control group and whose gross revenues and total assets, when aggregated with those of all other attributable investors and affiliates, do not exceed the gross revenues and total assets limits specified in § 24.709(a), or, in the case of an applicant (or licensee) that is a small business, do not exceed the gross revenues limit specified in paragraph (b) of this section.

(2) A *qualifying minority and/or woman investor* is a person who is a *qualifying investor* under paragraph (i)(1) of this section, who is (or holds an interest in) a member of the applicant's (or licensee's) *control group* and who is a *member of a minority group* or a woman and a United States citizen.

(3) For purposes of assessing compliance with the minimum equity requirements of § 24.709(b)(1)(v) and (b)(1)(vi), where such equity interests are not held directly in the applicant, interests held by qualifying investors or qualifying minority and/or woman investors shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

(4) For purposes of § 24.709 (b)(1)(v)(A)(*3*) and (b)(1)(vi)(A)(*3*), a qualifying investor is a person who is (or holds an interest in) a member of the applicant's (or licensee's) control group and whose gross revenues and total assets do not exceed the gross revenues and total assets limits specified in § 24.709(a).

(j) *Preexisting entity; Existing investor.* A *preexisting entity* is an entity that was operating and earning revenues for at least two years prior to December 31, 1994. An *existing investor* is a person or entity that was an owner of record of a preexisting entity's equity as of November 10, 1994, and any person or entity acquiring *de minimis* equity holdings in a *preexisting entity* after that date.

Note to Paragraph (j): In applying the term *existing investor* to *de minimis* interests in preexisting entities obtained or increased after November 10, 1994, the Commission will scrutinize any significant restructuring of the *preexisting entity* that occurs after that date and will presume that any change of equity that is five percent or less of the *preexisting entity's* total equity is *de minimis.* The burden is on the applicant (or licensee) to demonstrate that changes that exceed five percent are not significant.

PART 25—SATELLITE COMMUNICATIONS

42. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

43. Revise § 25.401 to read as follows:

§ 25.401 Satellite DARS applications subject to competitive bidding.

Mutually exclusive initial applications for DARS service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

§ 25.402 [Removed and Reserved]

44. Remove and reserve § 25.402.

45. Revise § 25.404 to read as follows:

§ 25.404 Submission of down payment and filing of long-form applications.

A high bidder that meets its down payment obligations in a timely manner must, within thirty (30) business days after being notified that it is a high bidder, submit an amendment to its pending application to provide the information required by § 25.144.

§ 25.405 through § 25.406 [Removed and Reserved]

46. Remove and reserve § 25.405 through § 25.406.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

47. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

48. Amend § 27.15 by removing paragraph (c) and redesignating paragraphs (d) and (e) as (c) and (d).

49. Revise § 27.201 to read as follows:

§ 27.201 WCS in the 2305–2320 MHz and 2345–2360 MHz bands subject to competitive bidding.

Mutually exclusive initial applications for WCS licenses in the 2305–2320 MHz and 2345–2360 MHz bands are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 27.202 through § 27.206 [Removed and Reserved]

50. Remove and reserve § 27.202 through § 27.206.

§ 27.208 [Removed and Reserved]

51. Remove and reserve § 27.208.

§ 27.209 [Amended]

52. Amend § 27.209 by removing paragraph (d).

53. Revise § 27.210 to read as follows:

§ 27.210 Definitions

(a) *Scope.* The definitions in this section apply to § 27.209, unless otherwise specified in those sections.

(b) *Small Business; Very Small Business; Consortia.*

(1) A *small business* is an entity that, together with its affiliates and controlling principals, has average

annual gross revenues that are not more than $40 million for the preceding three years.

(2) A *very small business* is an entity that, together with its affiliates and controlling principals, has average annual gross revenues that are not more than $15 million for the preceding three years.

(3) For purposes of paragraphs (b)(1) and (b)(2) of this section, the personal net worth of an applicant and its affiliates is not included in the applicant's gross revenues.

(4) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (b)(1) of this section or each of which satisfies the definition in paragraph (b)(2) of this section. Where an applicant (or licensee) is a consortium of small businesses, the gross revenues of each small business shall not be aggregated.

54. Amend § 27.501 by revising paragraph (a) to read as follows:

§ 27.501 746–764 MHz and 776–794 MHz bands subject to competitive bidding.

(a) Mutually exclusive initial applications for licenses in the 746–764 MHz and 776–794 MHz bands are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

* * * * *

55. Revise § 27.502 to read as follows:

§ 27.502 Designated entities.

Eligibility for small business provisions.

(a) A *small business* is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $40 million for the preceding three years.

(b) A *very small business* is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $15 million for the preceding three years.

(c) A *consortium of small businesses* (or a *consortium of very small businesses*) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section (or each of which individually satisfies the definition in paragraph (a)(2) of this section).

56. Revise § 27.701 to read as follows:

§ 27.701 698–746 MHz bands subject to competitive bidding.

Mutually exclusive initial applications for licenses in the 698–746 MHz band are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

PART 73—RADIO BROADCAST SERVICES

57. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

58. Amend § 73.3571 by revising paragraph (h)(4)(i) to read as follows:

§ 73.3571 Processing of AM broadcast station applications.

* * * * *

(h) * * *

(4)(i) The auction will be held pursuant to the procedures set forth in §§ 1.2101 *et seq.* and 73.5000 *et seq.* Subsequent to the auction, the FCC will release a Public Notice announcing the close of the auction and identifying the winning bidders. Winning bidders will be subject to the provisions of § 1.2107 of this chapter regarding down payments and will be required to submit the appropriate down payment within 10 business days of the Public Notice. Pursuant to § 1.2107 of this chapter and § 73.5005, a winning bidder that meets its down payment obligations in a timely manner must, within 30 days of the release of the Public Notice announcing the close of the auction, submit the appropriate long-form application for each construction permit for which it was the winning bidder. Long-form applications filed by winning bidders shall include the exhibits identified in § 73.5005(a).

* * * * *

59. Amend § 73.3572 by revising paragraphs (e) and (f) to read as follows:

§ 73.3572 Processing of TV broadcast, Class A TV broadcast, low power TV, TV translator and TV booster station applications.

* * * * *

(e) The FCC will specify by Public Notice, pursuant to § 73.5002, a period for filing applications for a new non-reserved television, low power TV and TV translator stations or for major modifications in the facilities of such authorized stations and major modifications in the facilities of Class A TV stations.

(f) Applications for minor modification of Class A TV, low power TV, TV translator and TV booster stations may be filed at any time, unless restricted by the FCC, and will be processed on a ''first-come/first-served'' basis, with the first acceptable application cutting off the filing rights of subsequent, competing applicants. Provided, however, that applications for minor modifications of Class A TV and those of TV broadcast stations may become mutually exclusive until grant of a pending Class A TV or TV broadcast minor modification application.

* * * * *

60. Amend § 73.3573 by revising paragraph (f)(5)(i) and (f)(5)(ii) to read as follows:

§ 73.3573 Processing FM broadcast station applications.

* * * * *

(f) * * *

(5) * * *

(i) Pursuant to § 1.2107 of this chapter and § 73.5005, a winning bidder that meets its down payment obligations in a timely manner must, within 30 days of the release of the public notice announcing the close of the auction, submit the appropriate long-form application for each construction permit for which it was the winning bidder. Long-form applications filed by winning bidders shall include the exhibits identified in § 73.5005(a).

(ii) These applications will be processed and the FCC will periodically release a Public Notice listing such applications that have been accepted for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584 of this chapter. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the winning bidder's long-form application, a Public Notice will be issued announcing that the construction permit is ready to be granted. Each winning bidder shall pay the balance of its winning bid in a lump sum within 10 business days after release of the Public Notice, as set forth in § 1.2109(a) of this chapter and § 73.5003. Construction permits will be granted by the Commission following the receipt of the full payment.

* * * * *

61. Amend § 73.5000 by revising paragraph (a) to read as follows:

§ 73.5000 Services subject to competitive bidding.

(a) Mutually exclusive applications for new facilities and for major changes to existing facilities in the following broadcast services are subject to competitive bidding: AM; FM; FM

translator; analog television; low power television; television translator; Instructional Television Fixed Service (ITFS); and Class A television. Mutually exclusive applications for minor modifications of Class A television and television broadcast are also subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in part 73 or part 74 of this chapter.

* * * * *

§ 73.5001 [Removed and Reserved]

62. Remove and reserve § 73.5001.

63. Revise § 73.5003 to read as follows:

§ 73.5003 Submission of full payments.

If a winning bidder fails to pay the balance of its winning bid in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline, provided that it also pays a late fee equal to five (5) percent of the amount due. Broadcast construction permits and ITFS licenses will be granted by the Commission following the receipt of full payment.

§ 73.5004 [Removed and Reserved]

64. Remove and reserve § 73.5004.

65. Amend § 73.5005 by revising paragraph (a) to read as follows:

§ 73.5005 Filing of long-form applications.

(a) Within thirty (30) days following the close of bidding and notification to the winning bidders, each winning bidder must submit an appropriate long-form application (FCC Form 301, FCC Form 346, FCC Form 349 or FCC Form 330) for each construction permit or license for which it was the high bidder. Long-form applications filed by winning bidders shall include the exhibits required by 47 CFR 1.2107(d) (concerning any bidding consortia or joint bidding arrangements); § 1.2110(j) (concerning designated entity status, if applicable); and § 1.2112 (a) and (b) (concerning disclosure of ownership and real party in interest information, and, if applicable, disclosure of gross revenue information for small business applicants).

* * * * *

66. Amend § 73.5006 by revising paragraph (d) to read as follows:

§ 73.5006 Filing of petitions to deny against long-form applications

* * * * *

(d) If the Commission denies or dismisses all petitions to deny, if any are filed, and is otherwise satisfied that an applicant is qualified, a public notice will be issued announcing that the broadcast construction permit(s) or ITFS license(s) is ready to be granted, upon full payment of the balance of the winning bid(s). See 47 CFR 73.5003. Construction of broadcast stations or ITFS facilities shall not commence until the grant of such permit or license to the winning bidder.

67. Revise § 73.5009 to read as follows:

§ 73.5009 Assignment or transfer of control.

(a) The unjust enrichment provisions found at §§ 1.2111(b) through (e) of this chapter shall not apply to applicants seeking approval of a transfer of control or assignment of a broadcast construction permit or license within three years of receiving such permit or license by means of competitive bidding.

(b) The ownership disclosure requirements found at § 1.2112(a) of this chapter shall not apply to an applicant seeking consent to assign or transfer control of a broadcast construction permit or license awarded by competitive bidding.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

68. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

69. Amend § 74.1233 by revising paragraph (d)(5)(i) to read as follows:

§ 74.1233 Processing FM translator and booster station applications.

* * * * *

(d) * * *

(5)(i) Pursuant to § 1.2107 of this chapter, a winning bidder that meets its down payment obligations in a timely manner must, within 30 days of the release of the public notice announcing the close of the auction, submit the appropriate long-form application for each construction permit for which it was the winning bidder. Long-form applications filed by winning bidders shall include the exhibits identified in § 73.5005 of this chapter.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

70. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

71. Revise § 80.1251 to read as follows:

§ 80.1251 Maritime communications subject to competitive bidding.

Mutually exclusive initial applications for VPCSA licenses and AMTS coast station licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

72. Amend § 80.1252 by removing paragraph (b)(4), redesignating paragraphs (b)(5) and (d) as paragraphs (b)(3) and (c), and revising newly redesignated paragraph (c) to read as follows:

§ 80.1252 Designated entities.

* * * * *

(c) A winning bidder that qualifies as a small business or consortium of small businesses as defined in § 80.1252(b)(1) or § 80.1252(b)(3) may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business or consortium of very small businesses as defined in § 80.1252(b)(2) or § 80.1252(b)(3) may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

73. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

74. Amend § 90.705 by revising the first sentence to read as follows:

§ 90.705 Forms to be used.

Phase II applications for EA, Regional, or Nationwide radio facilities under this subpart must be prepared in accordance with §§ 1.2105 and 1.2107 of this chapter. * * *

75. Revise § 90.801 to read as follows:

§ 90.801 900 MHz SMR spectrum subject to competitive bidding.

Mutually exclusive initial applications for 900 MHz SMR service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 90.802 through § 90.803 [Removed and Reserved]

76. Remove and reserve § 90.802 through § 90.803.

§ 90.805 through § 90.806 [Removed and Reserved]

77. Remove and reserve § 90.805 through § 90.806.

78. Revise § 90.807 to read as follows:

§ 90.807 Submission of upfront payments.

Each bidder in the 900 MHz SMR auction will be required to submit an upfront payment of $0.02 per MHz per pop, for the maximum number of licenses (in terms of MHz-pops) on which it intends to bid.

§ 90.808 [Removed and Reserved]

79. Remove and reserve § 90.808.

80. Revise § 90.809 to read as follows:

§ 90.809 License grants.

MTA licenses pursued through competitive bidding will be granted pursuant to the requirements specified in § 1.945 of this chapter.

81. Revise § 90.810 to read as follows:

§ 90.810 Bidding credits for small businesses.

A winning bidder that qualifies as a small business or a consortium of small businesses, as defined in § 90.814(b)(1)(i), may use a bidding credit of 15 percent to lower the cost of its winning bid on any of the blocks identified in § 90.617(d), Table 4B. A winning bidder that qualifies as a small business or a consortium of small businesses, as defined in § 90.814(b)(1)(ii), may use a bidding credit of 10 percent to lower the cost of its winning bid on any of the blocks identified in § 90.617(d), Table 4B.

§ 90.812 [Removed and Reserved]

82. Remove and reserve § 90.812.

83. Amend § 90.813 by removing paragraph (c), redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e), and by revising paragraph (a) and newly redesignated paragraph (c) to read as follows:

§ 90.813 Partitioned licenses and disaggregated spectrum.

(a) *Eligibility.* Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment of a license pursuant to § 1.948 of this chapter.

* * * * *

(c) *Installment payments*—(1) *Apportioning the balance on installment payment plans.* When a winning bidder elects to pay for its license through an installment payment plan pursuant to § 90.812, and partitions its licensed area or disaggregates spectrum to another party, the outstanding balance owed by the licensee on its installment payment plan (including accrued and unpaid interest) shall be apportioned between the licensee and partitionee or disaggregatee. Both parties will be responsible for paying their proportionate share of the outstanding balance to the U.S. Treasury. In the case of partitioning, the balance shall be apportioned based upon the ratio of the population of the partitioned area to the population of the entire original license area calculated based upon the most recent census data. In the case of disaggregation, the balance shall be apportioned based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum allocated to the licensed area.

(2) *Parties not qualified for installment payment plans.*

(i) The partitionee or disaggregatee shall, as a condition of the approval of the partial assignment application, pay its entire pro rata amount within 30 days of Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in a rescission of the grant of the partial assignment application.

(ii) The licensee shall be permitted to continue to pay its pro rata share of the outstanding balance and shall receive new financing documents (promissory note, security agreement) with a revised payment obligation, based on the remaining amount of time on the original installment payment schedule. These financing documents will replace the licensee's existing financing documents which shall be marked ''superseded'' and returned to the licensee upon receipt of the new financing documents. The original interest rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to the licensee's portion of the remaining government obligation. The Bureau will require, as a further condition to approval of the partial assignment application, that the licensee execute and return to the U.S. Treasury the new financing documents within 30 days of the Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in the automatic cancellation of the grant of the partial assignment application.

(iii) A default on the licensee's payment obligation will only affect the licensee's portion of the market.

(3) *Parties qualified for installment payment plans.*

(i) Where both parties to a partitioning or disaggregation agreement qualify for installment payments, the partitionee or disaggregatee will be permitted to make installment payments on its portion of the remaining government obligation, as calculated according to paragraph (d)(1) of this section.

(ii) Each party will be required, as a condition to approval of the partial assignment application, to execute separate financing documents (promissory note, security agreement) agreeing to pay their pro rata portion of the balance due (including accrued and unpaid interest) based upon the installment payment terms for which they qualify under the rules. The financing documents must be returned to the U.S. Treasury within thirty (30) days of the Public Notice conditionally granting the partial assignment application. Failure by either party to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The interest rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to both parties' portion of the balance due. Each party will receive a license for their portion of the partitioned market or disaggregated spectrum.

(iii) A default on an obligation will only affect that portion of the market area held by the defaulting party.

(iv) Partitionees and disaggregatees that qualify for installment payment plans may elect to pay some of their pro rata portion of the balance due in a lump sum payment to the U.S. Treasury and to pay the remaining portion of the balance due pursuant to an installment payment plan.

* * * * *

84. Amend § 90.814 by removing paragraphs (b)(2), (c), (d), (e), (f), (g), and (h), redesignating paragraph (b)(3) as (b)(2), and by revising newly redesignated paragraph (b)(2) to read as follows:

§ 90.814 Definitions.

* * * * *

(b) * * *

(2) A small business consortium is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies either definition of a small business in paragraph (b)(1) of this section. In a consortium of small businesses, each individual member must establish its eligibility as a small business, as defined in this section.

85. Revise § 90.815 to read as follows:

§ 90.815 Certifications, disclosures, records maintenance, and definitions.

(a) *Short-Form Applications: certifications and disclosure.* Each applicant for an MTA license which qualifies as a small business or consortium of small businesses shall append the following information as an exhibit to its short-form application (Form 175): The identity of the applicant's affiliates, persons or entities that hold attributable interests in such entity, and their affiliates, and, if a consortium of small businesses, the members in the joint venture.

(b) *Records maintenance.* All winning bidders qualifying as small businesses, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including any documents necessary to establish eligibility as a small business and/or consortium of small businesses under § 90.814. Licensees (and their successors in interest) shall maintain such files for the term of the license.

(c) *Definitions.* The terms affiliate, business owned by members of minority groups and/or women, consortium of small businesses, gross revenues, members of minority groups, nonattributable equity, small business and total assets used in this section are defined in § 90.814.

86. Revise § 90.901 to read as follows:

§ 90.901 900 MHz SMR spectrum subject to competitive bidding.

Mutually exclusive initial applications for 800 MHz band licenses in Spectrum Blocks A through V are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 90.902 [Removed and Reserved]

87. Remove and reserve § 90.903.

88. Revise § 90.903 to read as follows:

§ 90.903 Competitive bidding mechanisms.

(a) *Sequencing.* The Wireless Telecommunications Bureau will establish and may vary the sequence in which 800 MHz SMR licenses for Spectrum Blocks A through V will be auctioned.

(b) *Grouping.* (1) All EA licenses for Spectrum Blocks A through V will be auctioned simultaneously, unless the Wireless Telecommunications Bureau announces, by Public Notice prior to the auction, an alternative method of grouping these licenses for auction.

(2) *Spectrum blocks D through V.* All EA licenses for Spectrum Blocks D through V will be auctioned by the following Regions:

(i) Region 1 (Northeast): The Northeast Region consists of the following MTAs: Boston-Providence, Buffalo-Rochester, New York, Philadelphia, and Pittsburgh.

(ii) Region 2 (South): The South Region consists of the following MTAs: Atlanta, Charlotte-Greensboro-Greenville-Raleigh, Jacksonville, Knoxville, Louisville-Lexington-Evansville, Nashville, Miami-Fort Lauderdale, Richmond-Norfolk, Tampa-St. Petersburg-Orlando, and Washington-Baltimore; and, Puerto Rico and United States Virgin Islands.

(iii) Region 3 (Midwest): The Midwest Region consists of the following MTAs: Chicago, Cincinnati-Dayton, Cleveland, Columbus, Des Moines-Quad Cities, Detroit, Indianapolis, Milwaukee, Minneapolis-St. Paul, and Omaha.

(iv) Region 4 (Central): The Central Region consists of the following MTAs: Birmingham, Dallas-Fort Worth, Denver, El Paso-Albuquerque, Houston, Kansas City, Little Rock, Memphis-Jackson, New Orleans-Baton Rouge, Oklahoma City, San Antonio, St. Louis, Tulsa, and Wichita.

(v) Region 5 (West): The West Region consists of the following MTAs: Honolulu, Los Angeles-San Diego, Phoenix, Portland, Salt Lake City, San Francisco-Oakland-San Jose, Seattle (including Alaska), and Spokane-Billings; and, American Samoa, Guam, and the Northern Mariana Islands.

§ 90.905 through § 90.908 [Removed and Reserved]

89. Remove and reserve § 90.905 through § 90.908.

90. Revise § 90.909 to read as follows:

§ 90.909 License grants.

EA licenses pursued through competitive bidding procedures will be granted pursuant to the requirements specified in § 1.945 of this chapter.

91. Revise § 90.910 to read as follows:

§ 90.910 Bidding credits.

A winning bidder that qualifies as a very small business or a consortium of very small businesses, as defined in §§ 90.912(b)(2) and (b)(4), may use a bidding credit of 35 percent to lower the cost of its winning bid on Spectrum Blocks A through V. A winning bidder that qualifies as a small business or a consortium of small businesses, as defined in §§ 90.912(b)(1) or (b)(3), may use a bidding credit of 25 percent to lower the cost of its winning bid on Spectrum Blocks A through V.

§ 90.911 [Amended]

92. Amend § 90.911 by removing paragraph (c) and redesignating paragraphs (d), (e), (f) and (g) as (c), (d), (e) and (f).

93. Amend § 90.912 by removing paragraphs (b)(3), (c) and (d), redesignating paragraphs (b)(4) and (b)(5) as paragraphs (b)(3) and (b)(4) and revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 90.912 Definitions.

* * * * *

(b) * * *

(1) A *small business* is an entity that together with its affiliates and controlling interests, has average gross revenues that do not exceed $15 million for the three preceding years; or

(2) A *very small business* is an entity that together with its affiliates and controlling interests, has average gross revenues that do not exceed $3 million for the three preceding years.

* * * * *

94. Revise § 90.913 to read as follows:

§ 90.913 Certifications, disclosures, records maintenance, and definitions.

(a) *Short-form applications: certifications and disclosure.* Each applicant for an EA license which qualifies as a small business or consortium of small businesses under § 90.912(b) shall append as an exhibit to its short-form application (FCC Form 175): The identity of the applicant's affiliates and controlling principals, and, if a consortium of small businesses (or a consortium of very small businesses), the members of the joint venture.

(b) *Records maintenance.* All winning bidders qualifying as small businesses or very small businesses, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including any document necessary to establish eligibility as a small business, very small business and/or consortium of small businesses (or consortium of very small businesses) under § 90.912. Licensees (and their successors in interest) shall maintain such files for the term of the license.

(c) *Definitions.* The terms small business, very small business, consortium of small businesses, and consortium of very small businesses used in this section are defined in § 90.912.

95. Revise § 90.1001 to read as follows:

§ 90.1001 220 MHz service subject to competitive bidding.

Mutually exclusive initial applications for 200 MHz geographic

area licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 90.1003 through § 90.1015 [Removed and Reserved]

96. Remove and reserve § 90.1003 through § 90.1015.

97. Revise § 90.1017 to read as follows:

§ 90.1017 Bidding credits for small businesses and very small businesses.

A winning bidder that qualifies as a small business or a consortium of small businesses, as defined in §§ 90.1021(b)(1) or 90.1021(b)(3), may use a bidding credit of 25 percent to lower the cost of its winning bid. A winning bidder that qualifies as a very small business or a consortium of very small businesses, as defined in §§ 90.1021(b)(2) or 90.1021(b)(3), may use a bidding credit of 35 percent to lower the cost of its winning bid.

98. Amend § 90.1021, by removing paragraphs (b)(3), (c) and (d), redesignating paragraph (b)(4) as paragraph (b)(3) and revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 90.1021 Definitions concerning competitive bidding process.

* * * * *

(b) * * *

(1) A *small business* is an entity that, together with its affiliates and controlling interests, has average gross revenues that are not more than $15 million for the preceding three years.

(2) A *very small business* is an entity that, together with its affiliates and controlling interests, has average gross revenues that are not more than $3 million for the preceding three years.

* * * * *

99. Revise § 90.1023 to read as follows:

§ 90.1023 Certifications, disclosures, and records maintenance.

(a) *Short-form applications: certifications and disclosure.* In addition to certifications and disclosures required in part 1, subpart Q, of this chapter, each applicant for a 220 MHz service geographic area license which qualifies as a small business, very small business, consortium of small businesses, or consortium of very small businesses, shall append the following information as an exhibit to its FCC Form 175: the identity of the applicant's affiliates and controlling interests, and, if a consortium of small businesses (or consortium of very small businesses), the members of the joint venture.

(b) *Records maintenance.* All winning bidders qualifying as small businesses or very small businesses shall maintain at their principal place of business an updated file of ownership, revenue, and asset information, including any documents necessary to establish eligibility as a small business or very small business and/or consortium of small businesses (or consortium of very small businesses) under § 90.1021. Licensees (and their successors-in-interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (FCC Form 175), whichever is earlier.

(c) *Definitions.* The terms affiliate, small business, very small business, consortium of small businesses (or consortium of very small businesses), and gross revenues used in this section are defined in § 90.1021.

100. Revise § 90.1025 to read as follows:

§ 90.1025 Limitations on settlements.

The consideration that an individual or an entity will be permitted to receive for agreeing to withdraw an application or a petition to deny will be limited by the provisions set forth in § 1.2105(c) of this chapter.

101. Revise § 90.1101 to read as follows:

§ 90.1101 Location and Monitoring Service subject to competitive bidding.

Mutually exclusive initial applications for multilateration Location and Monitoring Service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

102. Amend § 90.1103 by removing paragraphs (b)(3), (b)(4), and (c), redesignating paragraphs (b)(5) and (d) as paragraphs (b)(3) and (c), and revising newly redesignated paragraph (c) to read as follows:

§ 90.1103 Designated entities.

* * * * *

(c) A winning bidder that qualifies as a small business or a consortium of small businesses as defined in paragraphs (b)(1) or (b)(3) of this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small businesses or a consortium of very small businesses as defined in paragraph (b)(2) or (b)(3) of this section may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter.

PART 95—PERSONAL RADIO SERVICES

103. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

104. Amend § 95.816 by removing paragraphs (c)(3), (c)(4), and (d), redesignating paragraphs (c)(5), (e), and(f) as paragraphs (c)(3), (d), and (e), revising paragraph (a) and newly redesignated paragraphs (d) and (e) to read as follows:

§ 95.816 Competitive bidding proceedings.

(a) Mutually exclusive initial applications for 218–219 MHz Service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

* * * * *

(d) *Bidding credits.* A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this subsection may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this subsection may use the bidding credit specified in accordance with § 1.2110(f)(2)(i) of this chapter.

(e) Winning bidders in Auction No. 2, which took place on July 28–29, 1994, that, at the time of auction, met the qualifications under the Commission's rules then in effect, for small business status will receive a twenty-five percent bidding credit pursuant to Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, Report and Order and Memorandum Opinion and Order, FCC 99–239 (released September 10, 1999).

105. Amend § 95.823 by removing paragraph (c)(1), redesignating paragraphs (c)(2) and (c)(3) as paragraphs (c)(1) and (c)(2), and revising newly redesignated paragraph (c)(1)(iii) to read as follows:

§ 95.823 Geographic partitioning and spectrum disaggregation.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(ii) * * *

(iii) The partitionor or disaggregator shall be permitted to continue to pay its pro rata share of the outstanding balance and, if applicable, shall receive loan documents evidencing the partitioning and disaggregation. The original interest

rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to the partitionor's or disaggregator's portion of the remaining government obligation.

* * * * *

PART 100—DIRECT BROADCAST SATELLITE SERVICE

106. The authority citation for part 100 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 335, 309 and 554.

107. Revise § 100.71 to read as follows:

§ 100.71 DBS subject to competitive bidding.

Mutually exclusive initial applications for DBS service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

§ 100.72 through § 100.76 [Removed and Reserved]

108. Remove and reserve § 100.72 through § 100.76.

§ 100.78 through § 100.79 [Removed and Reserved]

109. Remove and reserve § 100.78 through §100.79.

PART 101—FIXED MICROWAVE SERVICES

110. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

111. Amend § 101.56 by revising paragraph (i) to read as follows:

§ 101.56 Partitioned service areas (PSAs) and disaggregated spectrum.

* * * * *

(i) Licensees, including those using bidding credits in a competitive bidding procedure, shall have the authority to partition service areas or disaggregate spectrum.

§ 101.531 [Removed and Reserved]

112. Remove and reserve § 101.531.

§ 101.535 [Amended]

113. Amend § 101.535 by removing paragraphs (a)(1) and (c), redesignating paragraphs (a)(2), (a)(3), (d), and (e) as (a)(1), (a)(2), (c), and (d).

114. Revise § 101.537 to read as follows:

§ 101.537 24 GHz band subject to competitive bidding.

Mutually exclusive initial applications for 24 GHz band licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

115. Amend § 101.538 by removing paragraphs (a)(5), (a)(6), (a)(8), and (b), and redesignating paragraphs (a)(7) and (c) as paragraphs (a)(5) and (b), and revising newly redesignated paragraphs (a)(5) and (b) to read as follows:

§ 101.538 Designated entities.

(a) * * *

(5) A consortium of very small businesses, a consortium of small businesses, or a consortium of entrepreneurs is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the applicable definition in paragraphs (a)(1), (a)(2) or (a)(3) of this section. Where an applicant or licensee is a consortium of very small businesses, a consortium of small businesses, or a consortium of entrepreneurs, the gross revenues of each very small business, small business, or entrepreneur shall not be aggregated.

* * * * *

(b) *Bidding credits.* A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

116. Revise § 101.1101 to read as follows:

§ 101.1101 LMDS service subject to competitive bidding.

Mutually exclusive initial applications for LMDS licenses are subject to competitive bidding procedures. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 101.1102 through § 101.1105 [Removed and Reserved]

117. Remove and reserve § 101.1102 through § 101.1105.

118. Revise § 101.1107 to read as follows:

§ 101.1107 Bidding credits for very small businesses, small businesses and entrepreneurs.

(a) A winning bidder that qualifies as a very small business or a consortium of very small businesses pursuant to § 101.1112 may use a bidding credit of 45 percent to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a small business or a consortium of small businesses pursuant to § 101.1112 may use a bidding credit of 35 percent to lower the cost of its winning bid.

(c) A winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs pursuant to § 101.1112 may use a bidding credit of 25 percent to lower the cost of its winning bid.

(d) The bidding credits referenced in paragraphs (a), (b) and (c) of this section are not cumulative.

119. Revise § 101.1109 to read as follows:

§ 101.1109 Certifications, disclosures, and records maintenance.

(a) *Short-form applications: certifications and disclosure.* In addition to certifications and disclosures required in part 1, subpart Q, of this chapter, each applicant for an LMDS license which qualifies as a very small business, small business or entrepreneurs pursuant to § 101.1112 shall append the following information as an exhibit to its short-form applications (FCC Form 175): The identities of the applicant's affiliates and controlling interests.

(b) *Records maintenance.* All winning bidders qualifying as very small businesses, small businesses or entrepreneurs shall maintain at their principal place of business an updated file of ownership, revenue, and asset information, including any document necessary to establish eligibility as a very small business, small business or entrepreneur. Licensees (and their successors-in-interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (FCC Form 175), whichever is earlier.

§ 101.1110 [Removed and Reserved]

120. Remove and reserve § 101.1110.

121. Revise § 101.1112 to read as follows:

§ 101.1112 Definitions.

(a) *Scope.* The definitions in this section apply to §§ 101.1101 through 101.1112, unless otherwise specified in those sections.

(b) *Very small business.* A very small business is an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.

(c) *Small business.* A small business is an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of more than $15 million but not more than $40 million.

(d) *Entrepreneur.* An entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of more than $40 million but not more than $75 million.

(e) For purposes of determining whether an entity meets the definition of very small business, small business or entrepreneur, the gross revenues of the applicant, its affiliates and controlling interests shall be considered on a cumulative basis and aggregated.

(f) *Consortium.* A consortium of very small businesses, small businesses or entrepreneurs is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a very small business, small business or entrepreneur. Each individual member must establish its eligibility as a very small business, small business or entrepreneur. Where an applicant (or licensee) is a consortium of very small businesses, small businesses or entrepreneurs, the gross revenues of each business shall not be aggregated.

122. Revise § 101.1201 to read as follows:

§ 101.1201 38.6–40.0 GHz subject to competitive bidding.

Mutually exclusive initial applications for 38.6–40.0 GHz band licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 101.1202 through § 101.1207 [Removed and Reserved]

123. Remove and reserve § 101.1202 through § 101.1207.

124. Revise § 101.1208 to read as follows:

§ 101.1208 Bidding credits for small businesses.

A winning bidder that qualifies as a small business or a consortium of small businesses, (as defined in § 101.1209(b)(1)(i) may use a bidding credit of 25 percent to lower the cost of its winning bid on any of the licenses in this part. A winning bidder that qualifies as a very small business or a consortium of very small businesses, as defined in § 101.1209(b)(1)(ii), may use a bidding credit of 35 percent to lower the cost of its winning bid on any of the licenses in this part.

125. Amend § 101.1209 by removing paragraphs (b)(2), (c), (d), and (e), and redesignating paragraph (b)(3) as (b)(2), and revising newly redesignated paragraph (b)(2) to read as follows:

§ 101.1209 Definitions.

* * * * *

(b) * * *

(2) A small business consortium is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies either definition of a small business in paragraphs (b)(1) of this section.

126. Revise § 101.1317 to read as follows:

§ 101.1317 Competitive bidding procedures for mutually exclusive MAS EA applications.

Mutually exclusive initial applications for licenses in the portions of the MAS bands licensed on a geographic area basis are subject to competitive bidding procedures. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

127. Amend § 101.1319 by removing paragraph (c) and revising paragraph (b) to read as follows:

§ 101.1319 Competitive bidding provisions.

* * * * *

(b) *Bidding credits.* A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses, may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses, may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter.

§ 101.1323 [Amended]

128. Amend § 101.1323 by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d).

[FR Doc. 02–16096 Filed 7–8–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 27 and 73

[GN Docket No. 01–74; FCC 02–185]

Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses petitions for reconsideration filed by eight parties. The Commission affirms its prior decisions regarding issues relating to the transition to DTV service and the rules for auctioning and licensing of new services on the 698–746 MHz spectrum band (Lower 700 MHz Band), which has been reallocated pursuant to statutory requirements. The Commission takes these actions to promote the transition to DTV, meet its statutory mandate to reclaim and license this spectrum by competitive bidding, and enable the flexible use of the Lower 700 MHz Band for a wide range of new services.

DATES: Effective June 18, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Rowan, Wireless Telecommunications Bureau, at (202) 418–7240.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Memorandum Opinion and Order (MO&O),* FCC 02–185, in GN Docket No. 01–74, adopted on June 14, 2002, and released on June 14, 2002. The full text of this *MO&O* is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893. The complete text may also be downloaded at: *http://www.fcc.gov.*

Synopsis of MO&O

In the *MO&O,* the Commission: (1) Affirms the band plan and geographic license areas adopted in the *Report and Order (Lower 700 MHz R&O)* (67 FR 5491, February 6, 2002); (2) affirms the

Lower 700 MHz Band out-of-band emission (''OOBE'') limit and decision in the *Lower 700 MHz R&O* to adopt a uniform maximum power limit of 50 kW effective radiated power (''ERP'') for services operating on the Lower 700 MHz Band; (3) denies the petition for reconsideration of the Office of the Chief Technology Officer, Government of the District of Columbia (''OCTO''), which argues that public safety users should be permitted to obtain Lower 700 MHz band licenses under the ''public safety radio services'' auction exemption found at section 309(j)(2)(A) of the Communications Act, as amended (''Communications Act'' or ''Act''); (4) affirms the decision in the *Lower 700 MHz R&O* to dismiss all pending petitions for NTSC channel allotments in the Lower 700 MHz Band; (5) clarifies that broadcast stations clearing from Channels 59–69 in connection with voluntary band clearing arrangements may seek a modified NTSC or DTV channel allotment on Channels 52–58; (6) affirms the decision in the *Lower 700 MHz R&O* not to authorize additional new NTSC construction permits in the Lower 700 MHz Band and to open a 45-day window, during which such pending applications could be modified, either (a) to provide analog or digital television service in the core channels (2–51), or (b) to provide digital television service in Channels 52–58; and (7) affirms the decision of the Mass Media Bureau (now the Media Bureau) adopted pursuant to the *Lower 700 MHz R&O* providing that, where multiple applicants have filed for a single NTSC allotment in the Lower 700 MHz Band, they must file a petition for rulemaking proposing a single replacement channel to which all applicants agree to modify their applications.

I. Background

1. In the *Lower 700 MHz R&O,* the Commission reallocated the spectrum in the Lower 700 MHz Band to flexible use by fixed, mobile and new broadcast services, as well as incumbent broadcast services during their transition to DTV. The Commission established technical criteria designed to protect incumbent television operations in the band during the DTV transition period, and adopted a mechanism by which pending broadcast applications may be amended to provide analog or digital service in the core television spectrum or to provide digital service on TV Channels 52–58.

2. The Commission also adopted service rules required for use of the Lower 700 MHz Band by fixed, mobile, and broadcast services. The Commission divided the Lower 700 MHz Band into five blocks across different service areas for geographic area licensing: two 6-megahertz blocks of contiguous unpaired spectrum, as well as two 12-megahertz blocks of paired spectrum, were to be assigned over six Economic Area Groupings (''EAGs''); a remaining 12 megahertz block of paired spectrum (710–716 MHz and 740–746 MHz) was designated for licensing over 734 Metropolitan Statistical Areas (''MSAs'') and Rural Service Areas (''RSAs''). The Commission decided that all operations in the Lower 700 MHz Band would be generally regulated under the framework of part 27's technical, licensing, and operating rules. However, in order to permit both wireless services and certain new broadcast operations in the Lower 700 MHz Band, the Commission adopted maximum power limits for the Lower 700 MHz Band that would permit 50 kW ERP transmissions under certain conditions. The Commission declined to restrict any of the spectrum in the Lower 700 MHz Band exclusively to public safety or private radio services, but noted that its flexible use allocation under part 27 permits fixed and mobile wireless uses for private, internal radio communications.

II. Discussion

A. Service Rules

1. Band Plan and Geographic Scope of Licenses

3. In petitions for reconsideration/clarification, Spectrum Exchange Group, LLC and Allen & Company (''Spectrum Exchange/Allen'') and Spectrum Clearing Alliance (''SCA'') claim that the Commission should reconsider the plan for assignment of spectrum within the Lower 700 MHz Band, in particular the use of MSAs/RSAs to license Block C. In the *MO&O,* the Commission decides not to alter the band plan or geographic service areas that were adopted in the *Lower 700 MHz R&O,* including the assignment of MSA/RSA license areas to Block C currently occupied by TV Channels 54 and 59. Based on the Commission's consideration of the arguments raised on reconsideration and the factors previously considered in the *Lower 700 MHz R&O,* the Commission reaffirms that the band plan adopted in that order represents the best approach for achieving the Commission's policy objectives for the Lower 700 MHz Band. Thus, the Commission denies the petitions for reconsideration/clarification that raise issues regarding the band plan and geographic scope of Lower 700 MHz Band licenses.

4. In determining the optimum initial scope of licenses for the Lower 700 MHz Band, the Commission maintained its commitment to several spectrum management policies, including the statutory mandate to promote opportunities for a wide variety of applicants, including small and rural wireless providers, to obtain spectrum and participate in the provision of spectrum-based services. The MO&O states that a primary result of this process was a band plan that assigned the majority of spectrum over large service areas defined by EAGs. According to the Commission, this approach is consistent with the Commission's decision in the Upper 700 MHz Band proceeding to assign the majority of commercial spectrum in the Upper 700 MHz Band over EAGs. As the Commission noted in the Upper 700 MHz Band proceeding, large geographic areas such as EAGs offer several advantages. The MO&O states that large areas provide optimum opportunity to aggregate spectrum, which may be particularly useful for services that require nationwide footprints. It states that large geographic areas also make it easier for providers to take advantage of economies of scale, allowing existing technologies to grow and new technologies to develop. The Commission notes that large geographic areas also reduce the potential transaction costs to both auction participants seeking adjoining smaller geographic areas and carriers seeking to consolidate such areas post-auction. Finally, the Commission states that these large areas may help address problems due to incumbent TV stations. Because of these advantages associated with the assignment of larger licensing areas, the Commission designated the bulk of Lower 700 MHz Band spectrum as EAGs.

5. Nevertheless, based on the record, the statutory mandate of section 309(j) of the Communications Act, and a desire to promote opportunities for a wide variety of applicants in the provision of spectrum-based services in the Lower 700 MHz Band, the Commission also sought to define a band plan that afforded meaningful opportunities to the interested parties seeking licenses with smaller initial geographic scope. Because the Commission decided to assign only one 12 megahertz block of paired spectrum over MSAs/RSAs, the MO&O states that it is of consequential significance to such parties whether that block is assigned to spectrum with high incumbency, potential for interference, or other obstructions to use. Given the

lack of any significant difference in the relative incumbency levels on Blocks A, B, and C, the Commission focused on factors such as band plan architecture and adjacent channel interference in selecting the various license block assignments.

6. Given these considerations in the *Lower 700 MHz R&O,* the Commission finds its assignment of MSAs/RSAs to Block C to be in the public interest. Of the three paired 12-megahertz blocks, the *MO&O* states that Block B would have been the most suitable to meet the spectrum needs of the many parties interested in acquiring additional spectrum to complement existing networks of a local or smaller scale. However, the *MO&O* states that the use of MSAs/RSAs for Block B would have conflicted with another Commission goal that of making it possible to aggregate 24 megahertz of paired spectrum within the same EAG. As the Commission recognizes in the *MO&O* and in the *Lower 700 MHz R&O,* the ability to aggregate spectrum may offer important benefits. In order to provide additional opportunities for firms seeking to aggregate paired spectrum within the same EAG, the Commission had to designate either Blocks A and B or Blocks B and C as the EAG blocks. The *MO&O* states that using Block B for MSA/RSA licenses would result in the two EAG blocks being split, frustrating this objective. Thus, according to the Commission, the alternative locations for MSA/RSA licenses were Block A or Block C. Given these alternatives, the Commission finds Block C to be the best choice to meet its specific objective for the Lower 700 MHz Band to provide opportunities for provision of services by rural telephone companies, small businesses, and/or other entities seeking spectrum licenses of smaller geographic scope.

7. The Commission does not view the alternative, Block A, to be sufficient to meet its objectives. Compared to Blocks B through E, the *MO&O* states that Block A may pose the most burdens for new licensees seeking to offer services while protecting DTV operations on Channel 51. Unlike these other blocks, the Commission finds that Block A licensees will have to meet additional part 27 adjacent channel interference obligations involving these DTV operations on Channel 51, which are in the TV core and are therefore of a permanent nature. The *MO&O* states that these permanent DTV operations on Channel 51 underscore the advantages of licensing Channel 52 across EAGs, as these large geographic areas match and can be aggregated with those used for Block B. According to the Commission, such aggregation may permit licensees greater flexibility to engineer their systems around Channel 51 DTV operations by the use of measures such as internal guard bands. Accordingly, compared to Block C, the Commission finds that adjacent channel protection requirements may limit the usability of Block A as a stand-alone block.

8. The Commission rejects Spectrum Exchange/Allen's proposal to rearrange the Lower 700 MHz Band licensing arrangement and/or band plan. The Commission finds that their alternative proposals will not preserve the equitable distribution of licenses. In particular, the Commission does not accept the suggestion that an unpaired block should be assigned to the current Channel 52 spectrum instead of to Channels 55 and 56. The Commission does not find adequate support to change the existing separation between segments of the 12 megahertz paired blocks that were adopted in the Lower 700 MHz R&O. The *MO&O* states that the separation between the blocks that the Commission adopted in the Lower 700 MHz R&O is consistent with the band plan adopted in the Upper 700 MHz Band, and is appropriate for many two-way technologies to operate. According to the Commission, locating the 6-megahertz unpaired licenses at the center of the band plan maintains this separation.

9. The Commission finds that the spectrum policy objectives for the Lower 700 MHz Band are a balancing of a number of factors. According to the Commission, petitioners' specific arguments regarding the potential for Channel 59 ''free-riders'' to hinder band-clearing efforts on Channels 59–69 are outweighed by other considerations in the Lower 700 MHz band plan. While the Commission identified the early clearing of incumbents as an Upper 700 MHz Band consideration that would also be important in the Lower 700 MHz Band, the *MO&O* states that it does not follow that removing potential obstacles to band clearing on Channel 59 should be the overriding objective of the Commission's service rules for the Lower 700 MHz Band. Rather, the Commission finds that the aforementioned advantages of the band plan for a wide variety of applicants and spectrum-based services outweigh the potential that the band plan may present some obstacles to clearing Channel 59. The Commission notes that under the Commission's voluntary band-clearing policy, there has always been the potential for certain new licensees to benefit from the early clearing of a Channel 59–69 incumbent without being a party to the particular band-clearing agreement. The *MO&O* states that this potential exists for new licensees on Channels 58 and 59, as well as commercial and guard band licensees in the Upper 700 MHz Band. In particular, the Commission explains that there originally was no expectation that Lower 700 MHz licensees would contribute to Upper 700 MHz band-clearing efforts. According to the Commission, at the time the Upper 700 MHz band-clearing rules were adopted, it was assumed that Channels 52–59 would be auctioned later than Channels 60–69. Thus, the *MO&O* states that placing MSA/RSA licensees on Block C does not make band clearing more costly or difficult for petitioners than originally conceived.

2. Power and Out-of-Band Emission Limits

10. In a petition for reconsideration, Access Spectrum, LLC (''Access Spectrum'') requests that the Commission reconsider permitting licensees on TV Channels 57–59 to operate base stations at a power level of up to 50 kW ERP. In the *MO&O* the Commission declines to adopt petitioner's proposal to reduce the power limits in the upper portions of the Lower 700 MHz Band. In the Lower 700 MHz R&O, the Commission devoted considerable discussion to the possibility of harmful interference from 50 kW ERP operations to systems on adjacent channels operating at lower power levels. Contrary to the statements of the petitioner and other commenting parties, the Commission evaluated fully the potential impact of 50 kW transmissions on operations in the Upper 700 MHz Band, including users of spectrum licensed to guard band managers on 746–747 MHz.

11. To address the potential for adjacent channel interference resulting from operations on the Lower 700 MHz Band, the Commission adopted general rules that protect all adjacent channel licensees, whether they are operating in the Lower 700 MHz Band or in the lower portion of the Upper 700 MHz Band. As the *MO&O* states, by its very compliance with the power flux density (''PFD'') limit in § 27.55(b), a Block A, B, and/or C Lower 700 MHz licensee operating at 50 kW protects mobile receivers operating on 746–747 MHz from desensitization or front-end overload because they will experience PFD levels that are no greater than the PFD levels that could occur from stations operating at 1 kW ERP or less.

12. The *MO&O* states that licensees operating at power levels that exceed 1 kW are required to notify all licensees authorized on adjacent blocks that are

located within 75 km. The *MO&O* explains that this requirement provides adjacent channel licensees, including licensees on 746–747 MHz, the opportunity to adopt measures to mitigate interference. Finally, by meeting the limits of § 27.53(f) of the Commission's rules on the power of any emission outside a licensee's frequency band(s), which would include any OOBE on 746–747 MHz, the *MO&O* states that a Block A, B, and/or C Lower 700 MHz licensee operating at up to 50 kW will protect mobile and base receive stations on 746–747 MHz from harmful interference that could arise due to out-of-band emissions.

13. Petitioner claims that transmitters operating at 50 kW will produce high levels of interference to mobile and portable receivers in the 746–747 MHz guard band and that the PFD limit established in the *Lower 700 MHz R&O* is inadequate to protect receivers in the guard band from being overwhelmed. However, on the basis of petitioner's own calculations referenced in the *Lower 700 MHz R&O*, the Commission determined that the interference environment of mobile and portable receivers in adjacent bands, such as the 746–747 MHz guard band, would be not substantially changed with 50 kW ERP stations operating under the conditions of the PFD limit adopted in the *Lower 700 MHz R&O*. To protect adjacent channel mobile receivers from overload conditions, the Commission concluded that it is only necessary that 50 kW transmitters produce radio fields on the ground that are no greater than what would occur from commercial land mobile systems operating at power levels of 1 kW or less. Thus, the Commission adopted § 27.55(b) of the Commission's rules, which established a PFD limit for Lower 700 MHz Band stations operating up to 50 kW. The *MO&O* states that § 27.55(b) ensures that the interference environment for mobile and portable receivers operating on spectrum adjacent to 50 kW ERP transmitters is substantially the same as what it would be for mobile and portable receivers operating on spectrum adjacent to 1 kW ERP transmitters.

14. In support of Access Spectrum's petition, Motorola, Inc. (''Motorola'') filed an engineering analysis purporting to demonstrate that the PFD limit does not adequately protect adjacent channel licensees in the guard band. The Commission disagrees with Motorola's finding that there is a discontinuity in the provisions of its rules that affects systems operating below 1 kW differently from those operating at higher power levels. Motorola suggests that because of the Commission's rule, which places a particular PFD limit on above-1 KW ERP systems in the Lower 700 MHz Band, licensees will operate with antennas and antenna configurations that might put the full 3000 microwatts per square meter PFD on the ground in the vicinity of the transmitter and, therefore, cause excessively high out-of-band emissions into 746–747 MHz guard band handsets. According to the *MO&O*, Motorola's claimed large discontinuity in the level of out-of-band emissions produced when licensees operate at power levels above 1 kW suggests a sudden, large increase in emissions automatically occurring when a licensee operating at 1 kW ERP increases its power level to just above 1 kW ERP. According to the *MO&O*, this assertion, however, is groundless. The Commission explains that its 3000-microwatt per square meter rule merely places a limit on the energy a licensee operating above 1 kW can put on the ground 1 km away. In the course of operating at such power levels, and designing their systems to not exceed the 3000 mw/sq m limit, the *MO&O* states that if a licensee employs a particular antenna and/or an antenna configuration in an effort to actually reach this rather generous PFD limit, there would, as Motorola contends, be greater out-of-band emissions into guard band receivers than the Commission may have anticipated when it adopted its 43 + 10log P OOBE standard. However, the *MO&O* explains that it is far more likely that licensees designing commercial systems operating at power levels just above and just below 1 KW ERP will employ virtually the same antennas and antenna configurations, which, according to Motorola, would produce a much more modest 140 mw/sq m PFD level. Thus, the *MO&O* states that a licensee operating at a power level above 1 kW ERP will produce no greater emissions into guard band receivers than a licensee operating below 1 kW ERP—*i.e.*, there would be no sudden increase or discontinuity in emissions occurring from systems that choose to operate at power levels above 1 kW ERP.

15. The Commission states that it should also be noted that commercial licensees operating in the Upper 700 MHz Band, *e.g.*, the 747–752 megahertz license immediately above the guard band, could design systems that produce that same PFD level and thus create the same out-of-band emissions into guard band receivers that concern Motorola with regard to Lower 700 MHz Band systems. According to the *MO&O,* the Commission's rule, which is designed simply to place a limit on energy produced by high-powered systems in the Lower 700 MHz band, will not cause any greater out-of-band interference to occur to guard band receivers from commercial systems operating in Lower 700 MHz Band than could occur from commercial systems operating in the Upper 700 MHz Band.

16. The petitioner also claims that the use of antenna down tilting and improved filtering is inadequate to mitigate interference for users of the guard band utilizing portable handsets. From this observation, the petitioner concludes that the Commission failed to address the circumstances that will be faced by guard band users operating mobile or portable receivers and that the Commission's conclusions regarding interference mitigation are therefore baseless. As the petitioner recognizes, however, the Commission explains in the *MO&O* that antenna down tilting and filtering are measures that it suggested may be applied to base station receiving receivers, not mobiles or portables. Because of the potential interference scenarios involving base-to-base interference (i.e., scenarios that the adoption of a PFD limit on the ground would not address), the Commission provided a table demonstrating how a licensee could mitigate potential base-to-base interference from 50 kW transmissions by use of a selective antenna pattern or down tilting of its base receive antenna. The *MO&O* states that protection of mobiles and portables is already ensured by the PFD limitation of 3000 microwatts per square meter on the ground. Thus, the Commission squarely addressed and mitigated the potential impact to adjacent channel mobiles on 746–747 MHz by the adoption of § 27.55(c).

17. The Commission disagrees with the petitioner's supposition that the notification requirement placed on licensees that intend to operate base or fixed stations in excess of 1 kW ERP provides no practical benefit for users of the 746–747 guard band. The *MO&O* states that the petitioner's position relies on a misunderstanding that the notification requirement is intended to solve a base-to-mobile interference potential. As stated in the *MO&O*, the potential interference to mobile and portable receivers on the 746–747 MHz guard band is addressed by the PFD limitation of 3000 mw/sq m on the ground. As explained in the *Lower 700 MHz R&O*, the Commission states that the notification requirement is a means to implement the mitigation measures cited by the Commission to address the potential for base-to-base interference from 50 kW ERP operations.

18. Access Spectrum finally contends that the OOBE limit established in the *Lower 700 MHz R&O* should be significantly greater in order to mitigate adjacent channel interference caused by high power base station operations on license blocks occupying TV channels 57–59. In the *MO&O*, the Commission disagrees. According to the Commission, the OOBE limit will result in the identical out-of-band emission level for 1 kW transmitters as for 50 kW transmitters (*i.e.*, producing the absolute power of −43 dBw, or 50 microwatts, out of the transmitter). The *MO&O* states that the protection afforded adjacent channel receivers is independent of the maximum power allowed for Lower 700 MHz Band operations, finding that the requirement proposed by petitioner is unnecessary.

19. In sum, the Commission does not agree with the petitioner that the technical rules jeopardize users of the 746–747 MHz guard band. After full consideration of the arguments made by petitioner, and the commenters supporting its petition, the Commission will not alter the OOBE limit or maximum power limit of 50 kW ERP for any operations in the Lower 700 MHz Band. The Commission also leaves intact the related mitigation requirements that were adopted in the *Lower 700 MHz R&O* as reasonable measures to maintain the flexibility provided by the higher power limit, while mitigating the risk that any interference from stations operating in excess of 1 kW ERP will occur.

3. Applicability of Statutory Exemptions From Auction

20. In a petition for reconsideration or clarification, OCTO asks that the Commission confirm that the part 27 service rules that have been amended in the *Lower 700 MHz R&O* permit public safety eligibles to apply to provide private, internal communications services in the spectrum without participating in an auction. In the *MO&O*, the Commission denies OCTO's petition. The Commission did not designate any portion of the band to ''public safety radio services'' in the *Lower 700 MHz R&O*. Instead, the Commission allocated the entire band for flexible use by fixed, mobile, and broadcast services. Thus, the *MO&O* states that this band is not subject to the ''public safety radio services'' auction exemption found at section 309(j)(2)(A) of the Act.

21. OCTO argues that, because the *Lower 700 MHz R&O* permits private internal uses and public safety eligibles such as OCTO who have historically used private internal systems, the section 309(j)(2)(A) competitive bidding exemption applies to public safety radio service eligibles that seek to acquire licenses on the Lower 700 MHz Band. In previous rulemakings, the Commission examined the scope of section 309(j)(2)(A)'s exemption for public safety radio services, and concluded that the public safety radio services exemption applies to spectrum for particular services, rather than individual users of spectrum. Thus, the *MO&O* explains that the rules for a particular service determine whether spectrum is designated for public safety radio services exclusively, and the *MO&O* states that part 27 rules do not define any portion of the Lower 700 MHz spectrum as ''public safety radio services'' band. In developing service rules in this proceeding, the Commission relied on the record which demonstrated demand for commercial wireless and broadcast services in the Lower 700 MHz Band. According to the *MO&O*, these service rules reflect established Commission policy that favors flexibility of use as well as the Commission's experience in allocating spectrum, predictions about future demands and technologies, and statutory and other public interest considerations. To the extent that public safety users desire spectrum in a particular band, the Commission encourages them to participate in the service rule proceedings to help craft rules conducive to public safety needs. The *MO&O* states that public safety users, such as OCTO, may apply for unassigned spectrum in the Lower 700 MHz Band pursuant to the Commission's established section 337 procedures, or apply for designated public safety spectrum.

22. In the *MO&O*, the Commission finds that *National Public Radio, Inc.* v. *FCC (NPR)* (254 F.3d 226 (D.C.Cir.2001)) does not alter its determination that the public radio services exemption in section 309(j)(2)(A) does not apply to spectrum to be auctioned in the Lower 700 MHz Band. The *MO&O* states that in *NPR,* the court held that the section 309(j)(2)(C) exemption from competitive bidding for non-commercial educational broadcasters (''NCEs'') exempts NCEs from participating in auctions for any broadcasting spectrum, whether or not the spectrum has been reserved for noncommercial educational use. The *MO&O* states that, because section 309(j)(2)(C) specifically exempts NCE ''stations,'' the court concluded that the NCE exemption ''is based on the nature of the station that ultimately receives the license, not on the part of the spectrum in which the station operates.'' In contrast to section 309(j)(2)(C)'s NCE exemption specifically at issue in *NPR*, the Commission states that the public safety radio services exemption in section 309(j)(2)(A) does not refer to the ultimate recipient of the license. Rather, the *MO&O* states that it specifically refers to ''public safety radio services'' used by public safety entities, and not to public safety stations or licensees themselves. Thus, the Commission has previously found that the NCE exemption addressed in *NPR* is not analogous to the application of the section 309(j)(2)(A) exemption, as OCTO claims. The Commission therefore believes that the plain language analysis used in *NPR* supports the Commission's interpretation of section 309(j)(2)(A) in the *MO&O*.

23. The *MO&O* states that the interpretation of the public safety radio services exemption is also consistent with the Commission's obligations to auction and manage the Lower 700 MHz Band. Section 309(j)(14) of the Communications Act requires the Commission to reclaim and assign the Lower 700 MHz Band by competitive bidding. Thus, the Commission finds that allowing public safety entities to acquire spectrum in the band under the section 309(j)(2)(A) exemption would undermine Congress' intent to auction this spectrum. Under section 309(j)(3) of the Act, in using competitive bidding to assign licenses the Commission must seek to promote a number of competing objectives such as: promoting the introduction and deployment of new technologies and services for the public; encouraging economic opportunity and competition; and allowing time for interested parties to develop their business plans. The *MO&O* states that once Congress has determined that a band should be licensed through competitive bidding, allowing public safety eligibles to override that designation under the section 309(j)(2)(A) exemption would undermine Congress' directive and the Commission's auction authority. Because the approach advocated by OCTO would make spectrum freely available to public safety radio service eligibles on demand, the Commission explains that it and other potential applicants would not know in advance which licenses would be available at auction. According to the *MO&O*, such uncertainty would cause delays in the deployment of new spectrum-based services and would frustrate the statutory objectives of reclaiming the spectrum and subjecting it to competitive bidding.

24. For similar reasons, the Commission decides on its own motion, that NCEs are not eligible to apply for initial licenses for new services in the Lower 700 MHz Band. The *MO&O* states that, in arriving at this decision, the Commission does not reach the issue of whether the section 309(j)(2)(C) exemption applies to mutually exclusive license applications for new services in the Lower 700 MHz Band. The *MO&O* states that prohibiting NCE broadcasters from acquiring spectrum in this band under the section 309(j)(2)(C) exemption is necessary to implement the Commission's decisions to establish flexible mixed use licenses assigned by competitive bidding. By taking a flexible use approach and using competitive bidding, the Commission established a market-based approach that allows the spectrum to be employed for a full range of allocated services, so long as such operations comply with part 27's technical requirements. The Commission recognized recently that the restriction the Commission adopts would be consistent with the statutory language, as interpreted by the court in the *NPR* case. The Commission believes that this approach as applied to new services in the Lower 700 MHz Band will eliminate uncertainties about the outcome of the competitive bidding process and promote the Commission's goals of assigning these licenses expeditiously and promoting the intensive and efficient use of this spectrum. The Commission's decision does not in any way prejudge the outcome that will be taken in MM Docket No. 95–31. In this regard, the Commission notes that the Lower 700 MHz band is flexible mixed use spectrum, and very different considerations apply to conventional broadcast licenses regulated under parts 73 and 74 that are the subject of that proceeding. In arriving at a decision in that proceeding, the Commission intends to ensure that NCE broadcasters will continue to have adequate access to broadcast spectrum.

B. DTV Transition Issues

1. Temporary Relocation of Analog Stations to Channels 52–58 To Facilitate Band Clearing

25. SCA seeks clarification that the Commission's decision in the *Lower 700 MHz R&O* does not prohibit proposals to relocate analog stations to channels 52–58 in connection with Upper 700 MHz band-clearing agreements. Pursuant to the Commission's band-clearing policy, the Commission will entertain proposals to temporarily relocate analog operations to Channel 52–58 in connection with voluntary band-clearing arrangements that would result in the clearing of a Channel 59–69 station. As stated in the *MO&O*, the Commission adopted a policy in the Upper 700 MHz proceeding not to prohibit three-way band-clearing agreements pursuant to which a station might relocate temporarily into Channels 52–58. In so doing, the Commission observed that this alternative could provide necessary flexibility to incumbents on Channels 59–69 to enter into early clearing arrangements. The Commission has consistently recognized that extending flexibility to Channel 59–69 broadcasters to enter into voluntary arrangements for the early clearing of the Upper 700 MHz bands may make this spectrum available more quickly for new public safety and other services and promote the transition of analog television licensees to digital television service.

26. Contrary to Council Tree Communications, LLC's (''Council Tree's'') suggestion, the Commission does not believe that this policy presents significant uncertainties for potential bidders for licenses in the Lower 700 MHz band. The *MO&O* states that an analog broadcaster that seeks to move temporarily into this band must move into an existing Channel 52–58 allotment because the Commission has previously determined that it will not create new allotments in the Upper or Lower 700 MHz bands. Thus, as the Commission pointed out in the Upper 700 MHz proceeding, the *MO&O* states that such temporary moves will not increase the number of stations that will have to be cleared from Channels 52–58, but merely replace one station on those channels with another. For this reason, the Commission states that potential new 700 MHz licensees should be able to determine prior to the auctions the number of incumbent broadcast operations that may exist in (and adjacent to) the geographic areas and frequency bands that they are interested in serving.

27. The Commission also disagrees with Council Tree's argument that some broadcasters might be able to obtain excessive payments from new 700 MHz licensees in exchange for early band clearing. The *MO&O* states that the Commission's voluntary band-clearing policy merely permits bidders and broadcasters to negotiate for the economic value of early clearing. According to the Commission, once a particular allotment is cleared, the allotment would become part of the relevant 700 MHz license (or licenses), and no incumbent broadcast operation would be permitted to move into that allotment, except with the agreement of the new 700 MHz licensee. Thus, the *MO&O* states that a new 700 MHz licensee would not be liable for multiple payments to clear a single allotment. Further, the *MO&O* states that this policy is entirely voluntary. The Commission finds that there are possible uses for this spectrum that would allow new Lower 700 MHz licensees to begin operating immediately, subject to the requirement that they protect incumbent TV and DTV facilities from harmful interference. According to the Commission, such licensees would have full use of the licensed spectrum at the end of the DTV transition period in each market, at which time all incumbent broadcasters will be required to vacate the 700 MHz bands. In addition, the *MO&O* states that market forces should act to keep the total amount of all clearing payments at a reasonable level both because the interests of broadcasters and bidders in these negotiations are not congruent and because bidders that participate in band-clearing arrangements will have to outbid other wireless entities which may be willing to hold licenses for encumbered spectrum. When it extended this flexibility to Upper 700 MHz band-clearing broadcasters, the Commission explicitly recognized that, because relocations from Channels 59–69 to Channels 52–58 would be interim in nature, such moves could result in duplicative costs for broadcasters, additional disruption to viewers, and other inefficiencies. However, the Commission observed that the benefits of such an arrangement may well be substantial, and that a broadcaster will have considered the costs in its individual situation before voluntarily agreeing to move into Channels 52–58 with the knowledge that it will subsequently be obligated to vacate that allotment. Consistent with the Commission's policy regarding the early voluntary clearing of the 700 MHz bands, the Commission will consider any such public interest issues in its review of regulatory requests filed in connection with such voluntary clearing agreements.

2. Pending NTSC Petitions and Applications

28. In the *MO&O*, the Commission affirms its decision in the *Lower 700 MHz R&O* to (1) dismiss pending petitions for new NTSC channel allotments on channels 52–59, but permit such petitioners to refile new DTV allotment petitions on a core channel, subject to meeting DTV

spacing requirements; and (2) permit entities with pending applications to modify their filings to provide analog or digital service in the core or digital service on channels 52–58.

29. Univision Television Group, Inc. (''Univision'') requests that the Commission exclude it from the category of applicants who must amend their applications to specify an in-core channel or DTV operation, or face dismissal. According to the *MO&O*, Univision was the winning bidder in FCC Auction No. 80 (July 2000) for NTSC Channel 52 at Blanco, Texas. In the alternative, Univision asks that the Commission grant its pending petition for rulemaking (filed March 8, 2002) proposing to substitute NTSC Channel 17 for NTSC Channel 52 (''Petition''). In the *MO&O*, the Commission requires the Media Bureau to work with Univision to expedite the allotment process. In addressing Univision's Petition, the Commission directs the Media Bureau to consider waiver of the applicable land mobile distance separation criterion for the site proposed in Univision's petition for rulemaking based on the record in that proceeding. According to the *MO&O*, such wavier relief, if granted, should be conditioned on Univision agreeing to (1) accept interference from current and future 488–494 MHz land mobile facilities operating from base stations located within 50 miles of the Houston reference point and mobile units operating within 30 miles of their associated base stations and (2) not radiate a signal in the Houston area where land mobile operation is permitted with a field strength greater than that permitted by a full-power TV station that meets the co-channel distance separation criteria (341.1 km).

30. Two other petitioners, Pappas Telecasting of America, a California Limited Partnership, and Iberia Communications, LLC (''Pappas/Iberia'') and WB Television Network (''WB''), argue that the decision to permit NTSC applicants to provide digital service in the Lower 700 MHz Band will not ensure the recovery of this spectrum because DTV operations will encumber this spectrum just as much as NTSC operations. WB also argues that limiting new Lower 700 MHz Band stations to DTV service would not further the transition to DTV. The *MO&O* states that the Commission disagrees. The Commission continues to believe that authorizing new NTSC allotments or stations in the Lower 700 MHz Band is inconsistent with the 1997 Budget Act mandate to reclaim this spectrum for new services, and to facilitate the transition to digital television service. As the Commission noted in the *Lower 700 MHz R&O,* digital deployment in the Lower 700 MHz Band will introduce new digital service and could promote the acquisition of digital equipment by consumers. Moreover, according to the *MO&O*, new service providers in the band may be able to co-exist more easily with digital television stations because such stations operate with less power than most analog stations and are more resistant to interference. In addition, the *MO&O* states that this approach can avoid the complications that could arise with requiring licensees to convert their NTSC operations to digital relatively soon after they commence operations.

31. The Commission also disagrees with Pappas/Iberia's and WB's argument that the grant of additional requests for NTSC allotments and stations in the band would constitute a negligible increase and would have a low overall impact on the Lower 700 MHz Band. The *MO&O* states that, while not all of the 57 requests for new NTSC stations and allotments pending at the time the Commission released the *Lower 700 MHz R&O* could have been granted, there are approximately 100 NTSC stations in the band and, even assuming that only ten of them were granted, the number of NTSC stations in the band would increase by approximately ten percent. According to the Commission, such an increase would not be de minimis and could substantially increase the burden on new licensees to protect incumbents particularly because NTSC stations are more susceptible to interference.

32. Pappas/Iberia argue that the *Lower 700 MHz R&O* conflicts with section 309(l)(3) of the Act, which directs the Commission to waive any provisions of its regulations necessary to permit settlements between mutually exclusive applicants for commercial television stations during the 180-day period beginning on the date of enactment of the 1997 Budget Act. Pappas/Iberia claim that they may not be able to effectuate their settlement agreements, and that they have been deprived of due process. The *MO&O* states that the Commission disagrees. According to the *MO&O*, neither the plain language of section 309(l)(3) nor its legislative history suggests that Congress intended to limit the Commission's ability to require modification of settlement agreements. The *MO&O* states that it is well established that the filing of an application with the FCC creates no vested rights in the applicant, and that the Commission may make midstream rule adjustments, even though it disrupts expectations and alters the competitive balance among applicants. The Commission did not deprive Pappas/Iberia of their ability to have their settlement proposals considered using the same procedures as used for all other similarly situated applicants. Because Pappas/Iberia can effectuate their settlement agreements by specifying either digital service in channels 2–58 or NTSC service in the core, the Commission states that the *Lower 700 MHz R&O* does not conflict with section 309(l)(3) of the Act.

33. Pappas/Iberia also argue that the Commission's decision not to grant additional NTSC facilities in the Lower 700 MHz Band constitutes an unjustified departure from the Commission's first local service policy. In the *Lower 700 MHz R&O,* the Commission acknowledged that several commenters, including Pappas and WB, identified the potential benefits of first local service. The Commission, however, weighed competing policy considerations and found that not granting additional NTSC facilities in the Lower 700 MHz Band would further the 1997 Budget Act mandate to recover spectrum in the band. The *MO&O* also states that the *Lower 700 MHz Band R&O* did not foreclose the ability of applicants for NTSC stations in the band to provide first local television service: the order afforded applicants an opportunity to amend their applications to specify digital operations in channels 2–58 or analog service in the core.

3. Mutually Exclusive Applications

34. KM Communications, Inc. (''KM'') filed a petition for reconsideration or clarification in which it requested that the Commission overturn the Media Bureau's requirement that all pending mutually exclusive applicants for NTSC allotments in the Lower 700 MHz Band join in any petition or amendment to petition for rulemaking to substitute an alternate channel. The Commission denies KM's petition. The *MO&O* states that KM does not cite any case law, statute, rule, or FCC policy in support of its arguments. According to the Commission, it is not aware of any. The Commission has previously stated that elimination of vacant NTSC allotments would help it achieve its goals of full accommodation, replication and spectrum recovery. The Commission stated that in some areas a DTV channel could not be accommodated unless the unused NTSC allotments were eliminated and, in other areas, the presence of unused NTSC allotments would crowd the expected service areas of DTV allotments. The Commission therefore eliminated all vacant NTSC allotments. The Commission's decision was founded on the need to preserve

spectrum for use by new DTV stations and to avoid prolonging the DTV transition. The Commission finds that grant of the relief requested by KM would hinder the DTV transition in that the uncertainty created by the filing of allotment modification petitions for different channels by mutually exclusive applicants would frustrate the efforts of parties seeking new or modified DTV allotments.

Procedural Matters

35. The *MO&O* states that alternative formats (computer diskette, large print, audiocassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or at *mcontee@fcc.gov.* According to the Commission, the *MO&O* can also be downloaded at *http://www.fcc.gov/cgb/dro/.*

Ordering Clauses

36. Pursuant to sections 1, 2, 4(i), 5(c), 7, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 405, 614 and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 405, 614 and 615, the Commission takes this action.

37. The *MO&O* concludes that the Petitions for Reconsideration filed by Access Spectrum, LLC, Pappas Telecasting of America, a California Limited Partnership, and Iberia Communications, LLC, Spectrum Exchange Group, LLC and Allen & Company, WB Television Network, and Univision Television Group, Inc. are denied; that the Petitions for Reconsideration or Clarification filed by KM Communications, Inc., and Office of the Chief Technology Officer, Government of the District of Columbia are denied; and that the Petition for Clarification or Reconsideration filed by Spectrum Clearing Alliance is granted, to the extent indicated above, and is otherwise denied.

38. On the Commission's own motion, pursuant to sections 1.106 and 1.108 of the Commission's rules, 47 CFR 1.106, 1.108, the eligibility to apply for new services in the Lower 700 MHz Band is modified to the extent indicated in Section III.A.3 of the *MO&O.*

39. The Commission orders that its determinations are effective immediately upon release of the *MO&O.* The Commission states that good cause exists for the Commission's determinations to take effect immediately because, at the time the *MO&O* was released, Auction No. 44 for the Lower 700 MHz Band was scheduled to commence on June 19, 2002.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–17176 Filed 7–8–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43 and 63

[IB Docket No. 00–231, FCC 02–154]

2000 Biennial Regulatory Review; International Telecommunications Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends several of the Commission's rules regarding the provision of international telecommunications service. This document also clarifies the intent of certain rules and eliminates certain rules that are no longer necessary. This proceeding is part of the Commission's year 2000 biennial regulatory review. The rule changes will remove unnecessary burdens on the public and the agency.

DATES: Effective August 8, 2002 except for §§ 43.61, 63.10(d), 63.18(e)(3), 63.19(a) and (b), 63.20(a), and 63.24(e) and (f) which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. OMB, the general public, and other Federal agencies are invited to comment on the information collection requirements on or before September 9, 2002.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW., Room TW–B204F, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov*, and Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Jeanette_I._Thornton@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy Division, International Bureau, (202) 418–1499. For additional information concerning the information collections contained in this Order contact Judith Boley Herman at (202) 418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 02–154, released on June 10, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) of the Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. The document is also available for download over the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–02–154A1.pdf.* The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, Telephone: 202–863–2893, Fax: 202–863–2898, e-mail qualexint@aol.com. This Order contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the proposed information collections contained in this proceeding.

Summary of Report and Order

1. On November 13, 2000, the Commission adopted a Notice of Proposed Rulemaking (NPRM) (65 FR 79795, December 20, 2000), to determine whether it should amend and clarify several of its rules relating to international telecommunications services. The Commission initiated this proceeding in response to the Telecommunications Act of 1996, which requires the Commission to review all regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer necessary in the pubic interest. The Commission solicited comments on all of the proposals and tentative conclusions contained in the NPRM.

2. On May 22, 2002, the Commission adopted a Report and Order (Order) in this proceeding. The Commission

amended several of its rules regarding the provision of international telecommunications service. In addition, the Commission amended several rules to clarify the intent of those rules and to eliminate certain rules that no longer have any application. The rule changes will remove unnecessary burdens from both the public and the Commission.

3. The Commission adopted changes to its rules regarding assignments and transfers of control of international section 214 authorizations. The Commission consolidated several rule sections and revised the rules for *pro forma* transfers and assignments to be more consistent with those procedures used for other service authorizations, particularly commercial mobile radio services (CMRS). The Order permits a case-by-case determination of whether a transfer of control or assignment is substantial or *pro forma* in nature based on the guidance set forth in previous Commission decisions. The Order will treat a change from less than 50 percent ownership to 50 percent or more ownership as a transfer of control. For a *pro forma* transfer or assignment of control, a carrier will be required to notify the Commission of the new ownership structure within 30 days after the change. Licensees will be required to file a notification with the Commission within 30 days after consummation of a *pro forma* assignment or transfer of control. The Commission added definitions and explanatory language on assignments and transfers of control as well as procedures to be followed in the event of an involuntary assignment or transfer of control. The Commission concluded that these changes will allow greater flexibility to applicants in structuring transactions and will provide greater clarity to authorized international carriers regarding assignments and transfers of controls.

4. The Commission adopted its tentative conclusion that it is no longer necessary to apply the settlement rate benchmarks condition to section 214 authorizations to provide facilities-based international private line service. The Commission determined that the application of this condition to facilities-based private line service is not necessary to prevent carriers from evading the condition as it applies to facilities-based switched services.

5. The Commission modified its rules to relieve international carriers of the requirement to seek prior approval for discontinuance of service, except where such carriers possess market power on the U.S. end of the route. The Commission retained its notification requirement whereby carriers must provide affected customers with 60 days notice of a planned discontinuance, reduction or impairment of service and file with the Commission a copy of the notification. The Commission, however, exempted CMRS carriers from the procedures for discontinuances of international services

6. The Commission clarified its rules regarding attribution of indirect ownership interests in U.S. and foreign carriers. In addition, the Order eliminated the rule which requires dominant carriers to notify the Commission if they convey transmission capacity on submarine cables to another U.S. carrier. Because the time period has expired, the Commission deleted the requirement that certain foreign-owner carriers file with the Commission annual revenue and traffic reports with respect to all common carrier telecommunication services they offered in the United States in 1988, 1989, and 1990. Further, the Commission clarified its rulest that a facilities-based carrier may provide service over U.S. facilities that are not subject to authorization by the Commission, as long as those facilities are not on the Commission's ''Exclusion List for International Section 214 Authorizations'' (Exclusion List). Also, the Commission removed from § 63.22(b) the general reference to a list of countries in the Exclusion List.

7. The Order also removes duplicative notes contained in § 63.18. The Order deleted the obsolete language that required U.S. international carriers to file applications to supplement already-authorized facilities. In addition, the Order amended § 63.10(d) and 63.53(b) to eliminate the requirement that certain documents be submitted on computer diskettes because the Commission permits electronic filing.

8. The Commission exempted CMRS carriers providing resale of international switched services from filing quarterly traffic and revenue reports for their service to foreign markets where they are affiliated with a foreign carrier with market power in that market and that collects settlement payments from U.S. carriers. The Commission declined the commenters' request to eliminate the quarterly traffic and revenue data reporting requirements for carriers that meet certain traffic thresholds. The Commission did not consider Verizon's request to change the affiliation notification procedures because Verizon's request was addressed in a previous decision. Although the Commission did not eliminate the requirement that carriers inform the Commission of their interlocking directorates with foreign carriers, it clarified this requirement. The Commission declined to expand the reach of § 63.21(i) to commonly controlled subsidiaries. The Commission concluded that once a Bell Operating Company receives section 271 authority to provide InterLATA service in one state in its region it does not need to amend its section 214 international authorization when it gains section 271 authority for additional states.

Procedural Matters

9. *Paperwork Reduction Act.* The Order contained new or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in the Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due September 9, 2002. Comments should address the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX.

Title: Amendment of Parts 43 and 63 of the Commission's Rules for International Telecommunications Services (IB Docket No. 00–231).

Form Number: N/A.

Type of Review: New collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 149.

Number of Responses: 190.

Frequency of Response: On Occasion. Third party disclosure.

Total Annual Burden: 263 burden hours.

Total Annual Costs: $72,000.

Needs and Uses: The information will be used by the Commission staff in carrying out its duties under the Communications Act. The information collections are necessary to determine the qualifications of applicants to provide common carrier international telecommunications service, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest,

convenience, and necessity. The information collections are necessary to maintain effective oversight of U.S. international carriers generally. The notification requirements will ensure that the Commission's records accurately reflect the identity of every authorized carrier as well as other needed information.

10. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). An Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM. *See 2000 Biennial Regulatory Review*, IB Docket 00–231 (65 FR 79795, December 20, 2000). The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. No comments were received on the IRFA.

11. The Commission initiated this proceeding in response to the Telecommunications Act of 1996, which requires the Commission to review all regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer necessary in the public interest. The Commission identified a number of rules that could be modified or eliminated in light of competition in international telecommunications services. The Commission also identified a number of rules that could be clarified to make it easier for practitioners and other members of the public to understand and follow those rules. Commenters not only supported the proposals contained in the NPRM, but they requested changes to several other rules.

12. We believe that these changes are in the public interest and will remove unnecessary burdens on the public and the Commission. The rules and policies contained in the Order will benefit all carriers providing international common carrier service pursuant to Section 214 of the Act, regardless of whether the carrier is a small entity.

13. The Order adopts changes to the rules regarding assignments and transfers of control of international section 214 authorizations. In particular the Order consolidates the rules into one rule section, and it revises the rules for *pro forma* transfers and assignments to be more consistent with those procedures currently used for other service authorizations, particularly commercial mobile radio services (CMRS). The changes will eliminate confusion over our rules regarding assignments and transfers of control. Also, the rules will provide greater flexibility for all applicants, including small entities, in structuring transactions. The modifications to the rules eliminate filing requirements on small entities and, therefore, do not pose a significant economic impact on such entities.

14. The Order also removes the benchmark condition applicable to section 214 authorizations that provide facilities-based international private line service. The Commission adopted this condition for facilities-based switched service to affiliated markets to address the potential for a carrier to engage in a predatory price squeeze. We believe the condition is no longer necessary to prevent carriers from evading the condition as it applies to facilities-based switched service. We find that this condition is burdensome to carriers and could prevent the development of innovative services. We believe that removal of this specific condition will be in the public interest, and it will not impose a significant economic impact on small entities.

15. The Order also relieves international carriers of the requirement to seek prior approval for discontinuance of service, except where such carriers possess market power on the U.S. end of the route. The Order retains a notification requirement to provide customers with sufficient time to obtain an alternative service provider before service is discontinued. The Commission, however, exempted CMRS carriers from the procedures for discontinuances of international services. Currently the rules require prior notification of discontinuances of service by U.S. carriers regulated as dominant. We do not believe that the dominant and nondominant classification should be used in determining criteria for requiring prior approval. Rather, the Commission believes that prior approval should be required only for carriers possessing market power on the U.S. end of the route. This modification clarifies the carriers subject to the rule, and it removes the burdensome prior notification procedure for certain carriers while protecting customers from abrupt discontinuances of service. We do not believe that this change will impose any significant economic impact on small entities.

16. The Order clarifies other rules and eliminates rules that are no longer necessary, duplicative, or obsolete. In addition, the Order eliminates many procedural burdens placed on all entities. The measures contained in the Order are administrative and procedural changes designed to further streamline and simplify the rules for international telecommunications carriers, and there will be no significant impact imposed on small entities.

17. Therefore, we certify that none of the requirements of the Order will have a significant economic impact on a substantial number of small entities.

18. *Report to Congress:* The Commission will send a copy of the Order, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the Order and this Certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration and will be published in the **Federal Register**, 5 U.S.C. 605(b).

Ordering Clauses

19. Pursuant to the authority contained in sections 1, 4, 11, 214, 218, 219, 220 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 161, 214, 218, 219, 220, 403, this Report and Order in IB Docket No. 00–231 is hereby adopted.

20. Parts 43 and 63 of the Commission's rules are amended as set forth in the Rule Changes. These amendments and policy changes set forth in this Report and Order shall be effective August 8, 2002, except for §§ 43.61, 63.10(d), 63.18(e)(3), 63.19(a) and (b), 63.20(a), and 63.24(e) and (f) which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

21. The Commission's Consumer Information and Government Affairs Bureau, Reference Information Center, shall send a copy of this order, including the Final Regulatory Flexibility Act Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 43 and 63

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 43 and 63 as follows:

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104–104, secs. 402 (b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

2. Section 43.61 is amended by revising paragraph (c) to read as follows:

§ 43.61 Reports of international telecommunications traffic.

* * * * *

(c) Each common carrier engaged in the resale of international switched services that is affiliated with a foreign carrier that has sufficient market power on the foreign end of an international route to affect competition adversely in the U.S. market and that collects settlement payments from U.S. carriers shall file a quarterly version of the report required in paragraph (a) of this section for its switched resale services on the dominant route within 90 days from the end of each calendar quarter. Commercial Mobile Radio Service (CMRS) carriers, as defined in § 20.9 of this chapter, are not required to file reports pursuant to this paragraph. For purposes of this paragraph, *affiliated* and *foreign carrier* are defined in § 63.09 of this chapter.

§ 43.81 [Removed].

3. Remove § 43.81.

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

4. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

5. Section 63.09 is amended by revising Note 2 to read as follows:

§ 63.09 Definitions applicable to international Section 214 authorizations.

* * * * *

Note 2: Ownership and other interests in U.S. and foreign carriers will be attributed to their holders and deemed cognizable pursuant to the following criteria: Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain that is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of ''carrier,''' then X's interest in ''carrier''' would be 26 percent (the same as Y's interest because X's interest in Y exceeds 50 percent), and A's interest in ''carrier''' would be 7.8 percent (0.30 x 0.26 because A's interest in X is less than 50 percent). Under the 25 percent attribution benchmark, X's interest in ''carrier''' would be cognizable, while A's interest would not be cognizable.

6. Section 63.10 is amended by revising paragraphs (d) and (e) to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

* * * * *

(d) A carrier classified as dominant under this section shall file an original and two copies of each report required by paragraphs (c)(3), (c)(4), and (c)(5) of this section with the Chief, International Bureau. The carrier shall also file one copy of these reports with the Commission's copy contractor. The transmittal letter accompanying each report shall clearly identify the report as responsive to the appropriate paragraph of § 63.10(c).

(e) Except as otherwise ordered by the Commission, a carrier that is classified as dominant under this section for the provision of facilities-based services on a particular route and that is affiliated with a carrier that collects settlement payments for terminating U.S. international switched traffic at the foreign end of that route may not provide switched facilities-based service on that route unless the current rates the affiliate charges U.S. international carriers to terminate traffic are at or below the Commission's relevant benchmark adopted in IB Docket No. 96–261. See FCC 97–280 (rel. Aug. 18, 1997) (available at the FCC's Reference Operations Division, Washington, D.C. 20554, and on the FCC's World Wide Web Site at *http://www.fcc.gov).*

7. Section 63.17 is amended by revising paragraph (b)(4) to read as follows:

§ 63.17 Special provisions for U.S. international common carriers.

* * * * *

(b) * * *

(4) No U.S. common carrier may engage in switched hubbing to or from a third country where it has an affiliation with a foreign carrier unless and until it has received authority to serve that country under § 63.18(e)(1), (e)(2), or (e)(3).

8. Section 63.18 is amended by removing paragraph (e)(3), redesignating paragraph (e)(4) as paragraph (e)(3), revising newly redesignated paragraph (e)(3) and paragraph (g), and by adding a Note to paragraph (h) to read as follows:

§ 63.18 Contents of applications for international common carriers.

* * * * *

(e) * * *

(3) *Other authorizations.* If applying for authority to acquire facilities or to provide services not covered by paragraphs (e)(1) and (e)(2) of this section, the applicant shall provide a description of the facilities and services for which it seeks authorization. The applicant shall certify that it will comply with the terms and conditions contained in § 63.21 and § 63.22 and/or § 63.23, as appropriate. Such description also shall include any additional information the Commission shall have specified previously in an order, public notice or other official action as necessary for authorization.

* * * * *

(g) Where the applicant is seeking facilities-based authority under paragraph (e)(3) of this section, a statement whether an authorization of the facilities is categorically excluded as defined by § 1.1306 of this chapter. If answered affirmatively, an environmental assessment as described in § 1.1311 of this chapter need not be filed with the application.

(h) * * *

Note to Paragraph (h): Ownership and other interests in U.S. and foreign carriers will be attributed to their holders and deemed cognizable pursuant to the following criteria: Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages

for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain that is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of ''carrier,'' then X's interest in ''carrier'' would be 26 percent (the same as Y's interest because X's interest in Y exceeds 50 percent), and A's interest in ''carrier'' would be 7.8 percent (0.30 x 0.26 because A's interest in X is less than 50 percent). Under the 25 percent attribution benchmark, X's interest in ''carrier'' would be cognizable, while A's interest would not be cognizable.

* * * * *

9. Section 63.19 is revised to read as follows:

§ 63.19 Special procedures for discontinuances of international services.

(a) With the exception of those international carriers described in paragraphs (b) and (c) of this section, any international carrier that seeks to discontinue, reduce or impair service, including the retiring of international facilities, dismantling or removing of international trunk lines, shall be subject to the following procedures in lieu of those specified in §§ 63.61 through 63.601:

(1) The carrier shall notify all affected customers of the planned discontinuance, reduction or impairment at least 60 days prior to its planned action. Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice.

(2) The carrier shall file with this Commission a copy of the notification on or after the date on which notice has been given to all affected customers.

(b) The following procedures shall apply to any international carrier that the Commission has classified as dominant in the provision of a particular international service because the carrier possesses market power in the provision of that service on the U.S. end of the route. Any such carrier that seeks to retire international facilities, dismantle or remove international trunk lines, but does not discontinue, reduce or impair the dominant services being provided through these facilities, shall only be subject to the notification requirements of paragraph (a) of this section. If such carrier discontinues, reduces or impairs the dominant service, or retires facilities that impair or reduce the service, the carrier shall file an application pursuant to §§ 63.62 and 63.500.

(c) Commercial Mobile Radio Service (CMRS) carriers, as defined in § 20.9 of this chapter, are not subject to the provisions of this section.

10. Section 63.20 is amended by revising paragraph (a) to read as follows:

§ 63.20 Copies required; fees; and filing periods for international service providers.

(a) Unless otherwise specified the Commission shall be furnished with an original and five copies of applications filed for international facilities and services under Section 214 of the Communications Act of 1934, as amended. Upon request by the Commission, additional copies of the application shall be furnished. Each application shall be accompanied by the fee prescribed in subpart G of part 1 of this chapter.

* * * * *

§ 63.21 [Amended]

11. Section 63.21 is amended by removing paragraph (h) and redesignating paragraphs (i) and (j) as paragraphs (h) and (i).

12. Section 63.22 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 63.22 Facilities-based international common carriers.

* * * * *

(a) A carrier authorized under § 63.18(e)(1) may provide international facilities-based services to international points for which it qualifies for non-dominant regulation as set forth in § 63.10, except in the following circumstance: If the carrier is, or is affiliated with, a foreign carrier in a destination market and the Commission has not determined that the foreign carrier lacks market power in the destination market (see § 63.10(a)), the carrier shall not provide service on that route unless it has received specific authority to do so under § 63.18(e)(3).

(b) The carrier may provide service using half-circuits on any U.S. common carrier and non-common carrier facilities that do not appear on an exclusion list published by the Commission. Carriers may also use any necessary non-U.S.-licensed facilities, including any submarine cable systems, that do not appear on the exclusion list. Carriers may not use U.S. earth stations to access non-U.S.-licensed satellite systems unless the Commission has specifically approved the use of those satellites and so indicates on the exclusion list. The exclusion list is available from the International Bureau's World Wide Web site at *http://www.fcc.gov/ib.*

(c) Specific authority under § 63.18(e)(3) is required for the carrier to provide service using any facilities listed on the exclusion list, to provide service between the United States and any country on the exclusion list, or to construct, acquire, or operate lines in any new major common carrier facility project.

* * * * *

13. Section 63.23 is amended by revising paragraphs (a) and (b) to read as follows:

§ 63.23 Resale-based international common carriers.

* * * * *

(a) A carrier authorized under § 63.18(e)(2) may provide resold international services to international points for which the applicant qualifies for non-dominant regulation as set forth in § 63.10, except that the carrier may not provide either of the following services unless it has received specific authority to do so under § 63.18(e)(3):

(1) Resold switched services to a non-WTO Member country where the applicant is, or is affiliated with, a foreign carrier; and

(2) Switched or private line services over resold private lines to a destination market where the applicant is, or is affiliated with, a foreign carrier and the Commission has not determined that the foreign carrier lacks market power in the destination market (see § 63.10(a)).

(b) The carrier may not resell the international services of an affiliated carrier regulated as dominant on the route to be served unless it has received specific authority to do so under § 63.18(e)(3).

* * * * *

14. Section 63.24 is revised to read as follows:

§ 63.24 Assignments and transfers of control.

(a) *General.* Except as otherwise provided in this section, an international section 214 authorization may be assigned, or control of such authorization may be transferred by the transfer of control of any entity holding such authorization, to another party, whether voluntarily or involuntarily, directly or indirectly, only upon application to and prior approval by the Commission.

(b) *Assignments.* For purposes of this section, an assignment of an authorization is a transaction in which the authorization is assigned from one entity to another entity. Following an assignment, the authorization is held by an entity other than the one to which it was originally granted.

(c) *Transfers of control.* For purposes of this section, a transfer of control is a transaction in which the authorization remains held by the same entity, but there is a change in the entity or entities that control the authorization holder. A change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control. In all other situations, whether the interest being transferred is controlling must be determined on a case-by-case basis with reference to the factors listed in the Note to this paragraph (c).

Note to Paragraph (c): Because the issue of control inherently involves issues of fact, it must be determined on a case-by-case basis and may vary with the circumstances presented by each case. The factors relevant to a determination of control in addition to equity ownership include, but are not limited to the following: power to constitute or appoint more than fifty percent of the board of directors or partnership management committee; authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; ability to play an integral role in major management decisions of the licensee; authority to pay financial obligations, including expenses arising out of operations; ability to receive monies and profits from the facility's operations; and unfettered use of all facilities and equipment.

(d) *Pro forma assignments and transfers of control.* Transfers of control or assignments that do not result in a change in the actual controlling party are considered non-substantial or pro forma. Whether there has been a change in the actual controlling party must be determined on a case-by-case basis with reference to the factors listed in Note 1 to this paragraph (d). The types of transactions listed in Note 2 to this paragraph (d) shall be considered presumptively pro forma and prior approval from the Commission need not be sought.

Note 1 to Paragraph (d): Because the issue of control inherently involves issues of fact, it must be determined on a case-by-case basis and may vary with the circumstances presented by each case. The factors relevant to a determination of control in addition to equity ownership include, but are not limited to the following: power to constitute or appoint more than fifty percent of the board of directors or partnership management committee; authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; ability to play an integral role in major management decisions of the licensee; authority to pay financial obligations, including expenses arising out of operations; ability to receive monies and profits from the facility's operations; and unfettered use of all facilities and equipment.

Note 2 to Paragraph (d): If a transaction is one of the types listed further, the transaction is presumptively pro forma and prior approval need not be sought. In all other cases, the relevant determination shall be made on a case-by-case basis. Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests; Assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests; Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one; Corporate reorganization that involves no substantial change in the beneficial ownership of the corporation (including re-incorporation in a different jurisdiction or change in form of the business entity); Assignment or transfer from a corporation to a wholly owned direct or indirect subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or Assignment of less than a controlling interest in a partnership.

(e) *Applications for substantial transactions.* (1) In the case of an assignment or transfer of control shall of an international section 214 authorization that is not pro forma, the proposed assignee or transferee must apply to the Commission for authority prior to consummation of the proposed assignment or transfer of control.

(2) The application shall include the information requested in paragraphs (a) through (d) of § 63.18 for both the transferor/assignor and the transferee/assignee. The information requested in paragraphs (h) through (p) of § 63.18 is required only for the transferee/assignee. At the beginning of the application, the applicant shall include a narrative of the means by which the proposed transfer or assignment will take place.

(3) The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination.

(4) An assignee or transferee shall notify the Commission no later than 30 days after either consummation of the proposed assignment or transfer of control, or a decision not to consummate the proposed assignment or transfer of control. The notification may be made by letter (sending an original and five copies to the Office of the Secretary) and shall identify the file numbers under which the initial authorization and the authorization of the assignment or transfer of control were granted.

(f) *Notifications for non-substantial or pro forma transactions.* (1) In the case of a pro forma assignment or transfer of control, the section 214 authorization holder is not required to seek prior Commission approval.

(2) A pro forma assignee or carrier that is subject to a pro forma transfer of control shall file a notification with the Commission no later than 30 days after the assignment or transfer is completed. The notification may be made by letter (sending an original and five copies to the Office of the Secretary). The notification must contain the following:

(i) The information requested in paragraphs (a) through (d) and (h) of § 63.18 for the transferee/assignee;

(ii) A certification that the transfer of control or assignment was pro forma and that, together with all previous pro forma transactions, does not result in a change in the actual controlling party.

(3) A single letter may be filed for an assignment or transfer of control of more than one authorization if each authorization is identified by the file number under which it was granted.

(4) Upon release of a public notice granting a pro forma assignment or transfer of control, petitions for reconsideration under § 1.106 of this chapter or applications for review under § 1.115 of this chapter of the Commission's rules may be filed within 30 days. Petitioner should address why the assignment or transfer of control in question should have been filed under paragraph (e) of this section rather than under this paragraph (f).

(g) *Involuntary assignments or transfers of control.* In the case of an involuntary assignment or transfer of control to: a bankruptcy trustee appointed under involuntary bankruptcy; an independent receiver appointed by a court of competent jurisdiction in a foreclosure action; or, in the case of death or legal disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved; the applicant must make the appropriate filing no later than 30 days after the event causing the involuntary assignment or transfer of control.

§ 63.53 [Amended]

15. Section 63.53 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

[FR Doc. 02–16738 Filed 7–8–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 020325067–2161–02; I.D. 080901B]

RIN 0648–AP49

Atlantic Highly Migratory Species; Pelagic Longline Fishery; Shark Gillnet Fishery; Sea Turtle and Whale Protection Measures

AGENCY: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements measures required by the June 14, 2001, Biological Opinion (BiOp) on Atlantic highly migratory species (HMS) fisheries. In the HMS pelagic longline fishery, NOAA Fisheries is closing the northeast distant statistical reporting (NED) area, requiring the length of any gangion to be 10 percent longer than the length of any floatline if the total length of any gangion plus the total length of any floatline is less than 100 meters, and prohibiting vessels from having hooks on board other than corrodible, non- stainless steel hooks. In the HMS shark gillnet fishery, both the observer and vessel operator must look for whales, the vessel operator must contact NOAA Fisheries if a listed whale is taken, and shark gillnet fishermen must conduct net checks every 0.5 to 2 hours to look for and remove any sea turtles or marine mammals from their gear. This final rule also requires all HMS bottom and pelagic longline vessels to post sea turtle handling and release guidelines in the wheelhouse. The intent of these actions is to reduce the incidental catch and post-release mortality of sea turtles and other protected species in HMS fisheries.

DATES: Effective July 9, 2002, except for the amendments to § 635.5 and § 635.21 paragraphs (d)(3)(iv), (d)(3)(v) and (d)(3)(vi) which are effective August 8, 2002 and § 635.21 paragraph (c)(5)(iii)(B) which is effective October 7, 2002.

ADDRESSES: For copies of the Final Environmental Impact Statement/ Regulatory Impact Review/Final Regulatory Flexibility Analysis (FSEIS/ RIR/FRFA), contact Tyson Kade at 301–713–2347.

FOR FURTHER INFORMATION CONTACT: Tyson Kade or Margo Schulze-Haugen at 301–713–2347 or fax 301–713–1917.

To report a sea turtle mortality in the pelagic longline fishery, please call 800–858–0624. To report an interaction with a listed whale in the shark gillnet fishery, please call 305–862–2850.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish and tuna fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). Atlantic sharks are managed under the authority of the Magnuson-Stevens Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635. The management of Atlantic HMS fisheries is also subject to the requirements of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA).

Sea Turtle Bycatch Reduction

NOAA Fisheries is required to address the fishery-related takes of sea turtles that are listed as threatened or endangered under the ESA. Although a high percentage of hooked sea turtles are released alive, NOAA Fisheries remains concerned about serious injuries to sea turtles taken by pelagic longline gear. Longline fisheries generally affect sea turtles by entangling or hooking them in fishing gear. Sea turtles that become entangled in longline gear may drown when they are forcibly submerged or they may be injured by the entangling lines. Turtles that are hooked by longline gear can be injured or killed, depending on whether they are hooked internally or externally. In addition to these immediate effects, as discussed in the BiOp, trailing longline gear can have long-term effects on a turtle's ability to swim, forage, migrate, and breed, although these long-term effects are difficult to monitor and measure. From 1992 to 1999, NOAA Fisheries estimates that the Atlantic pelagic longline fishery interacted with an average of 795 leatherback and 986 loggerhead sea turtles annually with an average annual estimate of 11 leatherback and 8 loggerhead mortalities. As explained in the BiOp, based on available data, NOAA Fisheries expects that 27 percent of loggerhead sea turtles hooked in the beak or mouth, 42 percent of loggerhead sea turtles that ingested hooks, and 27 percent of the leatherback sea turtles hooked in their flippers will die.

In a BiOp prepared under section 7 of the ESA, completed June 14, 2001, NOAA Fisheries concluded that operation of the U.S. Atlantic pelagic longline fishery jeopardized the continued existence of threatened loggerhead and endangered leatherback sea turtles. Information from the NOAA Fisheries' Southeast Fisheries Science Center's February 2001 Stock Assessment of Loggerhead and Leatherback Sea Turtles and an Assessment of the Impact of the Pelagic Longline Fishery on the Loggerhead and Leatherback Sea Turtles of the Western North Atlantic is incorporated in the BiOp's analysis. The BiOp estimates that a 55–percent reduction in bycatch mortality from the Atlantic pelagic longline fishery is necessary to remove jeopardy to these two species. It is anticipated that this level of reduction can be achieved by implementing an area closure and by modifying the manner in which pelagic longline gear is deployed. The BiOp also requires several other measures to be implemented in the bottom and pelagic longline and shark gillnet fisheries to reduce bycatch of with sea turtles, whales, and other protected species.

Pelagic Longline Fishery

Pelagic longline gear is a type of commercial fishing gear used by U.S. fishermen in the Atlantic Ocean to target HMS. The gear consists of a mainline, often many miles long, suspended in the water column by floats and from which baited hooks are attached on leaders (gangions). Though not completely selective, longline gear can be modified (e.g., gear configuration, hook depth, timing of sets) to target sharks, swordfish, bigeye tuna, or yellowfin tuna.

Data collected through observer and vessel logbook programs indicate that pelagic longline fishing for Atlantic swordfish and tunas often results in the catch of non-target finfish species, including sharks, bluefin tuna, billfish, undersized swordfish, and protected species, including threatened and endangered sea turtles. The bycatch of protected species (sea turtles, marine mammals, or seabirds) may significantly impair the recovery of these species. Consistent with national standard 9 of the Magnuson-Stevens Act, NOAA Fisheries has implemented measures to reduce bycatch and bycatch mortality to the extent practicable in the Atlantic pelagic longline fishery.

Area Closure

The NED area has the highest incidental take rate of sea turtles by the U.S. Atlantic pelagic longline fleet. This regulation will close the NED area to vessels that have been issued, or are required to have, Federal HMS limited access permits and use pelagic longline

gear. The closed area is bounded by the following coordinates: 35°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 20°00′ W. long. This closure comprises an area of 2,631,000 square nautical miles (nm^2), including the Grand Banks and other fishing locations. Only larger vessels, primarily fishing out of ports in the northeast, travel to this area on a seasonal basis, from June to October. The BiOp estimates that this closure would reduce loggerhead and leatherback sea turtle interactions by 67 and 58 percent, respectively, based on logbook data and 51 and 49 percent, respectively, based on estimated extrapolated take levels derived from observer and logbook data in 1999.

Gear Modifications

In addition to the closure, NOAA Fisheries is implementing several gear modifications designed to reduce the mortality rate of captured sea turtles year-round and in all fishing areas. All Atlantic vessels that use pelagic longline gear and have been issued, or are required to have, Federal HMS limited access permits are required to deploy the gear so that hooked or entangled turtles have sufficient slack line to reach the surface and avoid drowning. Specifically, for pelagic longline sets in which the combined depth of any floatline plus any gangion is 100 meters or less, the length of any gangion must be at least 10 percent longer than the length of any floatline. For sets in which the combined depth is over 100 meters, the requirement does not apply.

All Atlantic vessels that use pelagic longline gear and have been issued, or are required to have, Federal HMS limited access permits are prohibited from having on board hooks other than corrodible, non-stainless steel hooks. NOAA Fisheries expects to hold a workshop by the end of 2002 to assess the impacts of corrodible hooks on sea turtles. Currently, this measure is believed to reduce the post-release mortality of sea turtles by either causing the fishing line to fall off or causing the hook to fall out earlier than might occur if it were made of stainless steel. NOAA Fisheries does not expect this management measure to have a significant impact on the catch rates of target species because many pelagic longline fishermen already use non-stainless steel hooks.

Finally, all Atlantic vessels that use bottom or pelagic longline gear and have been issued, or are required to have, Federal HMS limited access permits are required to post inside the wheelhouse the guidelines for the safe handling of sea turtles captured in a longline interaction. This measure will allow vessel captains to refer to the appropriate handling and release guidelines in the event a sea turtle is hooked or entangled. NOAA Fisheries previously distributed the guidelines via mail to all HMS bottom and pelagic longline permit holders and announced this requirement in an emergency rule (66 FR 36711, July 13, 2001) and the availability of the guidelines via the fax network in September 2001. The document is available for downloading from the Internet at: *http://www.nmfs.noaa.gov/sfa/hmspg.html*, or NOAA Fisheries can be contacted to request a copy (see **ADDRESSES**).

Reporting

Based on one of the terms and conditions (TC) of the BiOp, this rule requires that the captains of all vessels that have pelagic longline gear on board and have been issued, or are required to have, Federal HMS limited access permits report any turtles that are dead when they are captured or that die during capture to the Southeast Fisheries Science Center (SEFSC) Observer Program at a number designated by NOAA Fisheries (see **ADDRESSES**) within 48 hours of returning to port. NOAA Fisheries expects that this regulation will provide a better assessment of the number of lethal sea turtle takes during pelagic longline operations. This should result in more accurate management decisions involving fishery interactions with these species.

Experimental Fishery

Consistent with the BiOp, NOAA Fisheries expects to continue a research program, in consultation and cooperation with the domestic pelagic longline fleet, to develop and evaluate the efficacy of new technologies and changes in fishing practices to reduce sea turtle interactions. The experimental fishery uses a limited number of qualifying commercial fishing vessels as cooperative research platforms in the NED area. The approved research plan for the experimental fishery, as stated in the BiOp, complies with four conditions: the sea turtle target mortality reduction is 55 percent, the duration is no more than 3 years, all measures that are tested must be exportable to international fleets, and the level of mortality reduction may be achieved through reducing take rates or improving post-release survival for captured sea turtles.

In 2001, the experiment evaluated the effect of gangions placed two gangion lengths from floatlines, the effect of blue-dyed bait on target catch and sea turtle interactions, and the effectiveness of dipnets, line clippers, and dehooking devices. Eight vessels participated, making 186 sets, between August and November. During the course of the experimental fishery, 142 loggerhead and 77 leatherback sea turtles were incidentally captured and no turtles were released dead. NOAA Fisheries analyzed the data to determine if the tested measures reduced the incidental capture of sea turtles by a statistically significant amount. Measures to reduce post-release mortality continue to be examined and will be made available upon completion of this research. The blue-dyed bait parameter decreased the catch of loggerheads by 9.5 percent and increased the catch of leatherbacks by 45 percent. Neither value is statistically significant. In examining the gangion placement provision, the treatment sections of the gear (with gangions placed 20 fathoms from floatlines) did not display a statistically significant reduction in the number of loggerhead and leatherback sea turtle interactions compared to the control sections of the gear (with a gangion located under a floatline). The treatment section of the gear recorded a statistically insignificant increase in the number of leatherback interactions and had no significant effect on loggerhead interactions. These results led to the conclusion that the measures tested in 2001 were not successful in reducing interactions between sea turtles and pelagic longline gear. The 2002 NED experiment is expected to commence in July 2002.

Atlantic Shark Gillnet Fishery

Gillnet fishing for sharks occurs primarily in the waters off the coasts of Georgia and Florida. The fishery is comprised of 4 to 11 vessels that engage in nearshore fishing trips that typically last less than 18 hours. Legislation in South Carolina, Georgia, and Florida has prohibited the use of commercial gillnets in state waters, causing these vessels to operate further offshore in waters under Federal jurisdiction. Historically, eight shark species made up over 99 percent of sharks caught, including: blacknose, Atlantic sharpnose, blacktip, finetooth, scalloped hammerhead, bonnethead, spinner, and great hammerhead sharks. The June 14, 2001, BiOp contains several TCs that NOAA Fisheries must implement to reduce interactions with and mortalities of sea turtles and whales in the HMS shark gillnet fishery. The two requirements addressed by this final rule are discussed below.

Sighting and Reporting Whales

This action requires that both the vessel operator of all vessels issued Federal Atlantic shark limited access permits and that fish for Atlantic sharks with a shark gillnet (as defined by 50 CFR 229.2) and, in cases where an observer is on board, the observer, are responsible for sighting whales. The vessel operator is responsible for contacting the Southeast Regional Office (SERO) of NOAA Fisheries at a number designated by NOAA Fisheries (see **ADDRESSES**) and ceasing fishing in the event of a listed whale being taken in the drift gillnet/strikenet gear. By having two people responsible for sighting whales, NOAA Fisheries hopes that the animals can be spotted prior to any fishery interaction occurring.

Checking Gear

In the shark gillnet fishery, it is customary for fishermen to inspect the length of the net every 0.5 to 2 hours to check the net and the catch. This regulation requires the fishermen to conduct these net checks to look for and remove any sea turtles and marine mammals found during these checks. While using the gear for strikenetting, the fishermen are exempt from this requirement due to the limited soak time. As the average soak time for the drift gillnets in this fishery is 5.6 to 7.5 hours, this measure is expected to reduce the mortality level of incidentally captured protected species.

Changes From the Proposed Rule

The primary difference between the proposed rule and this action is that the proposed alternative requiring vessel operators using pelagic longline gear to set gangions two gangions lengths away from floatlines is not being made final. Results from the 2001 experimental fishery in the NED area determined that this alternative is not effective in reducing interactions with loggerhead and leatherback sea turtles. NOAA Fisheries presents an analysis of the impacts of not selecting this alternative in the FSEIS.

Response to Comments

NOAA Fisheries received numerous comments during the comment period on the April 10, 2002, proposed rule. Comments are summarized here together with responses.

Biological Opinion

Comment 1: The jeopardy finding of the June 14, 2001, BiOp is fundamentally flawed and treats the Atlantic pelagic longline fishery unequally compared to other domestic and international fisheries by trying to accomplish a 10–percent increase in pelagic stage juvenile loggerhead sea turtle survivorship in the entire North Atlantic basin by imposing a 55–percent reduction in sea turtle interactions by U.S. pelagic longline fishermen alone.

Response: Currently, NOAA Fisheries is in litigation concerning the BiOp and the resulting regulations and a court decision is pending. NOAA Fisheries believes that the BiOp and implementing regulations incorporate the best available scientific information concerning sea turtle populations and the HMS fisheries and do not impose an unfair burden on U.S. fishermen.

Comment 2: NOAA Fisheries should attempt to quantify or account for the reductions in sea turtle mortality that have resulted from the requirement to possess and use dipnets and line clippers.

Response: Efforts are underway to examine the post-release status of sea turtles incidentally captured in the pelagic longline fishery. The BiOp provides estimated mortality rates for sea turtles ranging from 27 to 42 percent depending on where the sea turtles were hooked. The 2001 NED experimental fishery included a pilot program to assess the post-release mortality of loggerhead sea turtles and additional studies are scheduled for 2002. These analyses should provide greater insights into the reductions in mortality gained by the use of dipnets and line clippers.

Comment 3: NOAA Fisheries should apply a moratorium on pelagic longline, gillnet, and other fishing gears that interact with sea turtles in the Atlantic Ocean to improve the turtles' chances for survival.

Response: While the HMS BiOp concluded that the operation of the Atlantic pelagic longline fishery jeopardizes the continued existence of loggerhead and leatherback sea turtles, a reduction in mortality of 55–percent would avoid jeopardy. NOAA Fisheries can achieve this reduction in mortality without implementing a moratorium on pelagic longline gear. Regarding shark gillnet and other fishing gears, the HMS BiOp found that these activities may adversely affect but are not likely to jeopardize sea turtles, whales, and other protected species, and consequently, identified several measures to reduce mortality without the need for a moratorium of those gears. This action implements those measures; therefore, a moratorium of shark gillnet and other fishing gear is not warranted at this time.

Comment 4: NOAA Fisheries should reinitiate consultation and consider more protective measures if gear restrictions do not provide the benefits anticipated in the biological opinion.

Response: NOAA Fisheries will evaluate the efficacy of the bycatch and bycatch reduction measures implemented in this action as well as the efficacy of measures already in place as the data become available for statistical analyses. If these and other measures are found to be insufficient, NOAA Fisheries will take appropriate action.

Comment 5: The United States must take action to increase the visibility of sea turtle conservation on an international scale with the goal of reducing international sea turtle interactions.

Response: The International Bycatch Reduction Task Force is organizing a meeting in late 2002 to address international sea turtle concerns. Also, the experiments being conducted in the NED area are intended to develop pelagic longline gear and/or fishing modifications to reduce sea turtle takes that can be transferred to international pelagic longline fleets.

Comment 6: Sea turtle populations are increasing.

Response: Trend information on loggerhead sea turtles demonstrates that the Florida subpopulation is increasing, but that the northern subpopulation, which has a large number of males, is relatively small and is either stable or declining. For leatherback sea turtles, there have been increases in the number of nests on some of the smaller nesting beaches, but the largest nesting beach has had a 15–percent decline in nests in recent years indicating a declining population.

Pelagic Longline Fishery

NED Area Closure

Comment 7: NOAA Fisheries should not close the NED area. It is unreasonable to close 2.6 million square nautical miles of the Atlantic Ocean when data show that the turtle interactions occur in a relatively small portion of the NED area and only during certain months.

Response: Based on the dynamic nature of ocean systems and the migratory nature of marine wildlife, closed areas have to be large to ensure they achieve the goal in reducing bycatch and bycatch mortality. NOAA Fisheries is aware that turtle interactions occur in a portion of the NED area; however, those interactions occur where and when pelagic longline fishing has occurred. Closing only that portion of the NED area where and when pelagic longline fishing has occurred could result in continued or

increased takes of turtles in the remaining open area of the NED area if fishermen move there. Additionally, closing only part of the NED area could decrease human safety at sea if fishermen move into unfamiliar fishing areas even further offshore than the areas currently fished or fish during other times of year when weather conditions are poor.

Comment 8: By closing the NED, the most productive swordfish fishing grounds available to U.S. fishermen, NOAA Fisheries will create a situation in which foreign flag fleets supplant the U.S. fleet and will likely result in more sea turtles being killed because international fleets do not follow careful sea turtle handling and release guidelines like U.S. fishermen.

Response: NOAA Fisheries is conducting an experimental fishery in the NED area using vessels of the U.S. pelagic longline fleet to test various gear configurations. The goal of the experiment is to develop pelagic longline gear and/or fishing modifications to reduce sea turtles bycatch and bycatch mortality sufficiently so that the NED area can be reopened and the technology exported to the international pelagic longline fleets. In the event that no such gear or fishing modifications are developed and the NED area remains closed to the U.S. pelagic longline fleet, NOAA Fisheries is aware that international fleets may increase fishing effort in the NED area. Regardless of the results of the NED area experiment, NOAA Fisheries intends to pursue international sea turtle conservation agreements and measures.

Comment 9: NOAA Fisheries should close the NED area to conventional pelagic longline gear but keep it open to fishermen who voluntarily agree to test new and innovative fishing techniques.

Response: NOAA Fisheries supports cooperative research with fishermen to develop pelagic longline gear and/or fishing modifications to reduce sea turtle interactions and is conducting an experimental fishery in the NED area using vessels of the U.S. pelagic longline fleet. That experimental fishery began in 2001 and will continue through 2003. After that time, NOAA Fisheries will evaluate the results of the experimental fishery and determine if the NED area can be reopened to pelagic longline vessels using modified fishing techniques, determine if further research is necessary and take appropriate action to conduct that research, or determine if no further research is warranted. NOAA Fisheries believes that the final action to close the NED area while also conducting the experimental fishery is essentially the same outcome as that suggested by the comment.

Comment 10: NED boats cannot simply go fish elsewhere as NOAA Fisheries predicts and remain profitable. Other coastal fishing areas are overcrowded, have competition with coastal longliners, and have gear conflicts with stationary lobster and crab gear.

Response: NOAA Fisheries is aware that not all other fishing areas are likely to be as profitable as the NED area for pelagic longline vessels that typically fished in the NED area. However, data available to NOAA Fisheries indicate that other areas, such as the Caribbean area, can be as profitable as the NED area. Additionally, data available to NOAA Fisheries indicate that NED vessels already fish in other areas, including the Caribbean, during winter months; thus, switching locations is not prohibitive for NED vessels. Also, in the short term, NED vessels can volunteer to participate in the NED experimental fishery. Participating in the NED experimental fishery can be profitable for these vessels in the short-term, and, in the worst case scenario, will allow these vessels time to plan their course of action if the experimental fishery does not produce results that would allow NOAA Fisheries to reopen the NED area.

Comment 11: Closing the NED area after closing the Florida Straits and Charleston Bump will direct increased effort into smaller and smaller areas and will increase regulatory discards that could result in more time and area closures.

Response: NOAA Fisheries intends to analyze the impacts of the time and area closures in the Florida east coast, Charleston Bump, and DeSoto Canyon as well as the NED area closure implemented by the emergency rule as the data become available for statistical analyses. NOAA Fisheries will take appropriate action at that time to address bycatch in the remaining open areas in light of effort redistribution as warranted.

Comment 12: Closing the NED area will prevent U.S. fishermen from enjoying the fruits of their hard-earned success in reversing the decline of swordfish.

Response: U.S. fishermen may fish for and land swordfish in U.S. waters under its quota from the International Commission for the Conservation of Atlantic Tunas and, as swordfish stocks recover, U.S. fishermen can reasonably expect to enjoy the benefits of a sustainable swordfish fishery.

Comment 13: Without the establishment of a sunset provision for the NED area closure, there is no assurance that it will ever be reevaluated.

Response: The NED area is closed to achieve most of the required 55–percent reduction mandated by the HMS BiOp. The experimental fishery in the NED area is designed to develop effective sea turtle bycatch reduction measures so that an area closure will not be necessary and the NED area can be reopened. Additionally, NOAA Fisheries intends to analyze the impact of all time and area closures implemented for HMS fishermen as data become available. Based on these analyses, NOAA Fisheries will modify any closures, as appropriate.

Comment 14: NOAA Fisheries must close the NED area to fishing by the U.S. pelagic longline fleet to ensure that it meets its legal obligations under the ESA and avoid jeopardy by reducing sea turtle bycatch. This closure would have the additional benefit of reducing the incidence of blue shark discards by U.S. fishermen.

Response: NOAA Fisheries is implementing such as closure.

Other Alternatives

Comment 15: The 2001 NED area experiment found that the gangion placement relative to floatlines shows a negative effect. NOAA Fisheries should rescind this requirement on the entire U.S. fleet at this time.

Response: NOAA Fisheries is not implementing that requirement.

Comment 16: NOAA Fisheries should implement the alternative to prohibit setting gangions in close proximity to floatlines as the measure is projected to reduce the take of loggerhead and leatherback sea turtles by 22 and 24 percent, respectively.

Response: The 2001 experimental fishery in the NED area demonstrated that this measure is not effective in reducing the incidental capture of sea turtles and may increase the interaction rate with leatherback sea turtles. Accordingly, NOAA Fisheries is not implementing that requirement.

Comment 17: NOAA Fisheries must analyze and quantify the benefits and drawbacks of the proposal to have gangion lengths be 110 percent of floatline length, including the economic impact of reduced target catch. This proposed alternative may have minimal effect on sea turtle survival as ocean currents or turtle movements could tangle the line.

Response: The economic impacts of the final actions are analyzed in the FSEIS. Additionally, the FSEIS provides the best available information concerning the effectiveness and

impacts of the final actions. NOAA Fisheries believes that the measure will have a positive effect on sea turtle survival although no quantitative estimate is available at this time.

Comment 18: NOAA Fisheries should implement the requirement for gangions to be longer than floatlines.

Response: NOAA Fisheries is implementing this requirement.

Comment 19: NOAA Fisheries needs to make a decision concerning the corrodible hook criteria and determine a policy for their implementation and extend it to all bycatch species and all HMS hook and line fisheries to increase post-release survival. The hooks should be used experimentally before being adopted on a larger scale.

Response: The current standard for corrodible hooks is that they be composed of non-stainless steel. NOAA Fisheries believes that many pelagic longline fishermen already use non-stainless steel hooks so that this measure should result in little change in costs or fishing practices while providing benefits to sea turtles although no quantitative estimates are available at this time. Therefore, NOAA Fisheries believes that finalizing this measure for the Atlantic pelagic longline fleet at this time is warranted. NOAA Fisheries may revise this standard at a future date as additional information becomes available. NOAA Fisheries intends to host a conference by the end of 2002 with sea turtle biologists and veterinarians to examine this issue.

Comment 20: Fishermen using other fishing gears are known to interact with sea turtles and should also be required to possess and use specific handling instructions for reference during their sea turtle interactions.

Response: NOAA Fisheries intends to develop fishery-specific sea turtle handling and release guidelines. At that time, NOAA Fisheries will take the appropriate action to ensure their distribution and use.

Comment 21: NOAA Fisheries should require posting of sea turtle handling and release guidelines in the wheelhouse.

Response: NOAA Fisheries is implementing a measure that will require guidelines to be posted in the wheelhouse of all pelagic and bottom HMS longline vessels.

Comment 22: NOAA Fisheries needs to address several issues concerning sea turtle post-release survival, including differences in gear interactions between fisheries and oceans, tag reliability, and creating a strategy for research using the Atlantic pelagic longline fleet.

Response: The 2001 NED area experimental fishery included a pilot study that involved the deployment of 16 PSAT (pop-off satellite) tags on loggerhead sea turtles caught in the Atlantic pelagic longline fishery. This study is scheduled to continue during the next 2 years of the experimental fishery and should effectively address the issues concerning sea turtle post-release survival following interactions with Atlantic pelagic longline gear.

Comment 23: NOAA Fisheries should increase the level of observer coverage in the pelagic longline and shark gillnet fisheries to better monitor interactions with protected species.

Response: Observer coverage is an important way to monitor fishery interactions with protected species. NOAA Fisheries has determined the level of observer coverage necessary in the pelagic longline and shark gillnet fisheries to produce statistically rigorous estimates of protected species interactions and is implementing those coverage levels.

Comment 24: NOAA Fisheries should implement a measure requiring pelagic longline vessels to carry a dehooking device on board.

Response: NOAA Fisheries believes that additional information concerning what types and techniques are optimal to reduce harm to sea turtles is needed before implementing such a measure. Several designs were tested in the 2001 NED experimental fishery and will continue to be tested in the 2002 NED area experimental fishery. NOAA Fisheries will take appropriate action based on the results of the experiment.

Comment 25: NOAA Fisheries should implement the timely reporting of sea turtle mortalities and the proper release of incidentally caught turtles, which are important factors in assessing and reducing sea turtle mortality in the pelagic longline fishery.

Response: NOAA Fisheries is implementing a measure that requires HMS fishermen with pelagic longline on board to report lethal turtle takes within 48 hours of returning to port.

NED Experiment

Comment 26: NOAA Fisheries should not forgo the collection of data that may help the bycatch reduction of other incidentally caught species when conducting research to mitigate the impact of pelagic longline gear on sea turtles.

Response: Data are being collected that will permit the analysis of the impacts of the measures tested in the NED area experimental fishery on other incidentally caught species.

Comment 27: NOAA Fisheries should consider the impact of gear modifications on other species besides sea turtles prior to exporting them to international fisheries.

Response: The impact of gear modifications on other species will be considered prior to promulgating regulations implementing measures for the pelagic longline fishery for species besides sea turtles and prior to exporting successful sea turtle take reduction measures to international fisheries.

Comment 28: NOAA Fisheries should implement any additional measures found to be effective during the ongoing sea turtle research, however more attention should be paid to other protective measures such as time or area closures.

Response: NOAA Fisheries intends to implement measures found to be effective in reducing sea turtle bycatch and bycatch mortality in the NED area experiment, including time or area closures, as appropriate.

Comment 29: NOAA Fisheries should continue to experiment with gear modifications that would reduce the mortality of sea turtles and implement new rules in response to new data about their effectiveness.

Response: NOAA Fisheries will continue to conduct such experiments.

Comment 30: NOAA Fisheries should foster cooperation with the industry through truly cooperative research based on real science.

Response: NOAA Fisheries believes that the NED area experimental fishery is an example of cooperative research based on sound science.

Shark Gillnet Fishery

Comment 31: The requirement for shark gillnet fishermen to contact NOAA Fisheries and cease fishing in the event of a listed whale being taken will neither protect listed whales nor reduce the bycatch of these animals.

Response: According to the BiOp, the major known sources of anthropogenic mortality and injury to listed whales include entanglement in commercial fishing gear and ship strikes. However, many of the reports of whale mortality cannot be attributed to a particular source. While to date, there has not been a confirmed interaction with a listed whale in the shark gillnet fishery, NMFS believes that it is appropriate to implement regulations that will enhance the response to an interaction with a listed whale and prevent a subsequent interaction by requiring the vessel to cease fishing immediately.

Comment 32: NOAA Fisheries should prohibit gillnet sets within a 5 nautical

mile radius of any sighted listed whale or, if the gear is already set, the removal of that gear from the water.

Response: NOAA Fisheries believes that current regulations under the Atlantic Large Whale Take Reduction Plan are adequate. Current regulations require shark gillnet fishermen to fish for sharks with a strikenet during times that right, humpback, fin or minke whales are present, require that no nets be set under limited visibility, prohibit setting of nets within three nautical miles of a whale, and require that gear be removed immediately from the water if a whale moves within 3 nautical miles of the gear.

Comment 33: NOAA Fisheries should implement regulations that would prevent gillnet fishing if a listed whale were taken for the rest of the season or until whales are no longer sighted in that area based on seven consecutive sighting surveys.

Response: NOAA Fisheries believes that current regulations under the Atlantic Large Whale Take Reduction Plan are adequate. Additionally, NOAA Fisheries has the authority under the Endangered Species Act to implement temporary closures to reduce takes or potential takes, as appropriate.

Comment 34: The net check provision will likely offer little conservation benefit for marine mammals and sea turtles unless it is coupled with disentanglement response training.

Response: The net check provision will require the shark gillnet fishermen to check their nets every 0.5 to 2 hours which should reduce the mortality of any incidentally captured protected species. Disentanglement training was provided to fishermen in this fishery although attendance was low. NOAA Fisheries may pursue additional disentanglement training for shark gillnet fishermen in the future. Additionally, the requirement to notify NOAA Fisheries if a whale is taken will allow personnel trained in disentangling these animals to respond.

Comment 35: NOAA Fisheries should maintain 100–percent observer coverage in the shark gillnet fishery due to the bycatch problems associated with this gear.

Response: Recently, the necessary level of observer coverage was statistically determined to be 53–percent outside right whale calving season and 100–percent coverage during right whale calving season. A statistically significant level of observer coverage would yield comparable results to 100- percent coverage. Additionally, given its limited resources, NOAA Fisheries believes that the resources that would be required to provide additional coverage outside the right whale calving season (not required statistically) are needed to provide additional observer coverage in other fisheries. NOAA Fisheries will maintain 100–percent observer coverage in this fishery during right whale calving season.

Comment 36: In addition to the preferred alternatives (requiring immediate reporting if a listed whale is taken; making the observer and vessel operator responsible for looking for whales; and frequent net checks), NOAA Fisheries should require fishermen to remove finfish bycatch in addition to protected species during net checks in the shark gillnet fishery.

Response: While NOAA Fisheries agrees that the preferred alternatives are appropriate for this fishery, NOAA Fisheries is concerned that requiring the removal of finfish bycatch may delay the completion of the net checks and could increase the bycatch mortality of any incidentally captured protected species. However, NOAA Fisheries encourages shark gillnet fishermen to remove finfish bycatch as quickly and with as minimal injury as practicable.

Comment 37: The size and low income of the shark gillnet fishery may not justify the high cost of the 100–percent observer coverage required during the right whale calving season compared to other observer needs.

Response: NOAA Fisheries is aware that observer coverage costs for this fishery are high relative to the number of participants in this and other fisheries. NOAA Fisheries is considering the use of vessel monitoring systems to decrease observer coverage costs for this fishery. The issue of vessel monitoring systems is currently in litigation and NOAA Fisheries is waiting for a decision from the court.

Comment 38: Shark gillnet fishermen should be required to check their nets continuously while deployed due to the numerous interactions with sea turtles and marine mammals. The 0.5 to 2 hour period between checking nets will result in unacceptably high sea turtle and marine mammal mortality. If the fishery cannot demonstrate that the gear can be fished cleanly, that gear should be prohibited for HMS species due to high bycatch of protected species.

Response: At this time, NOAA Fisheries believes that requiring net checks every 0.5 to 2 hours is sufficient to reduce protected species bycatch mortality. Currently, the average soak time for drift gillnets is 5.6 to 7.5 hours. Thus, drift gillnet fishermen will have to check the net between 3 and 15 times during an average soak. However, NOAA Fisheries intends to review protected species bycatch mortality data in the future as data on the efficacy of this requirement become available and will re-evaluate a requirement to conduct net checks continuously or other gear restrictions in this fishery if protected species bycatch mortality is not reduced.

Enforcement

Comment 39: NOAA Fisheries should implement vessel monitoring systems to improve the enforceability of the closed areas. This would be less disruptive and less costly for the fishermen and the Coast Guard.

Response: This matter is currently in litigation. NOAA Fisheries is waiting for a decision from the Court.

Comment 40: Enforcement of the gangion length provision will be difficult at sea. NOAA Fisheries should consider developing criteria to provide guidance in this matter (for example, specify how many gangions would need to meet the 110–percent requirement to verify compliance).

Response: NOAA Fisheries will work with enforcement agents to develop guidance to enhance the enforceability of this measure.

Comment 41: Enforcement of the gangion placement provision will be difficult because the gear can slide on the mainline due to a variety of reasons.

Response: As this measure was found to be ineffective in reducing sea turtle bycatch in the NED area experimental fishery, NOAA Fisheries is not implementing the gangion placement requirement in this final action.

Comment 42: NOAA Fisheries should consider a requirement that vessels fishing with bottom longline gear in an area closed to pelagic gear should not be allowed to possess pelagic species (i.e., tuna and sharks) and conversely, require that vessels fishing with pelagic gear not be allowed to have bottom species on board (i.e., some shark species) to increase enforcement.

Response: The time and area closures currently in place for pelagic longline fishermen were designed to reduce bycatch in the pelagic longline fishery and do not apply to bottom longline fishermen. Thus, extending any closure to bottom longline fishermen would require NOAA Fisheries to conduct the appropriate analyses and rulemaking. However, NOAA Fisheries will discuss this comment with the NOAA Fisheries Office of Law Enforcement and consider its management implications.

Comment 43: NOAA Fisheries should prohibit possession of non-corrodible stainless steel hooks, not use of non-corrodible stainless steel hooks, because it would be difficult for the Coast Guard

to enforce a use prohibition if the vessel is allowed to have both corrodible non-stainless steel and non-corrodible stainless steel hooks on board.

Response: NOAA Fisheries has modified the final action to prohibit vessels from having hooks on board other than corrodible, non-stainless steel hooks when pelagic longline gear is on board.

Comment 44: The proposed definition of corrodible hooks as non-stainless steel would be enforceable at sea.

Response: NOAA Fisheries has implemented this provision.

Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.*

NOAA Fisheries has prepared a final regulatory flexibility analysis (FRFA) that examines the impacts of the selected alternatives, discussed previously in this document. It assumes that distant water fishermen, during the time they would otherwise be pelagic longline fishing in the NED area, will instead: (1) make longline sets in other areas or (2) exit commercial fishing. As of October 2001, there were 320 directed and incidental swordfish permit holders under the limited access system. In 2000, only 199 fishermen actively participated in the pelagic longline fishery according to logbook reports. Since 1997, an average of 15 vessels have fished each year in the NED area. These vessels have traditionally landed approximately 20 percent of all domestically caught Atlantic swordfish and have been the most economically viable vessels in the fleet. However, due to the size and cost of operation of these vessels, NOAA Fisheries feels that it may not be as economical to fish in other areas of the Atlantic Ocean and thus, these 15 vessels would be significantly impacted due to the NED closure. The other selected alternatives regarding the pelagic longline fishery are not expected to have significant economic effects.

The other alternatives considered for the pelagic longline fishery include: taking no action; other gear modifications, such as requiring dehooking devices, requiring hooks to be set deeper in the water column, requiring the use of blue-dyed bait, requiring the use of mackerel as bait, requiring the use of stealth gear, and requiring the use of circle hooks; and a ban on pelagic longline fishing by U.S. vessels in the Atlantic Ocean. While the no action alternative and most of the gear modification alternatives are not expected to have significant economic impacts on participants in the pelagic longline fishery, these alternatives either do not reduce bycatch to the extent required by the BiOp or are not supported by sufficient data to support implementation. Initial data concerning the alternative requiring circle hooks indicates that they may significantly reduce post-release mortality of sea turtles; however, more information is needed concerning impacts on target catch and appropriate hook size. In addition, there would be an economic cost associated with this alternative if fishing vessels were required to switch to circle hooks. While a complete ban on longline fishing would reduce bycatch to a greater extent than the NED time-area closure, the lost value of commercial seafood products and the adverse impacts on fishery participants and fishing communities would impose greater costs than the final action. Thus, there are no alternatives available at this time that would minimize the economic impacts on the approximately 15 NED area vessels and reduce sea turtle interactions as required under the ESA and national standard 9 of the Magnuson-Stevens Act. The RIR/FRFA provides further discussion of the economic effects of all the alternatives considered for the pelagic longline fishery.

The two selected alternatives for the shark gillnet fishery will affect a small number of vessels, approximately 4 to 11, based on NOAA Fisheries records. The measure to contact NOAA Fisheries and cease fishing following the take of a listed whale species could have an economic impact as the vessel is required to terminate fishing operations for that trip. The requirement for shark drift gillnet fishermen to check their nets every 0.5 to 2 hours could increase the cost per trip slightly based on the amount of fuel consumed. However, NOAA Fisheries does not expect these impacts to be significant.

Of the alternatives that are not selected for the shark gillnet fishery, taking no action will not impose an economic impact. However, prohibiting drift gillnet gear in the shark fishery and requiring vessels to fish in a strikenet fashion using spotter planes could impose a significant negative effect upon the vessels in the shark gillnet fishery.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The final rule is consistent with the ESA. The June 14, 2001, BiOp found that the fishery was likely to jeopardize loggerhead and leatherback sea turtles. The final rule implements the RPA, with the exception of one part, and the other required measures in the BiOp. NOAA Fisheries is not making final the part of the rule that implemented the component of the RPA specifying gangion placement. This requirement appeared to result in an unchanged number of interactions with loggerheads and an apparent increase in interactions with leatherbacks. Preliminary logbook data, which is inconclusive in the absence of analysis in conjunction with observer data, indicate that the level of incidental take of loggerheads is below that anticipated in the incidental take statement of the BiOp. Preliminary logbook data, collected during the time that the gangion placement requirement was in effect, indicate that the level of take of leatherbacks may or may not be exceeded. Accordingly, although NOAA Fisheries will reevaluate this conclusion upon completion of the analysis of incidental take based on both logbook and observer data, at this time NOAA Fisheries determines that the fishery with this final rule is not likely to jeopardize sea turtles. NOAA Fisheries' Office of Protected Resources concurred with this determination on July 1, 2002. In this final rule, NOAA Fisheries is also finalizing measures that would decrease the impacts of other HMS fisheries on sea turtle and whale populations.

NOAA Fisheries has determined that these regulations will be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have approved coastal zone management programs. Eleven of the 12 states that replied to the letter regarding compliance of the proposed rule with the Coastal Zone Management Act found NOAA Fisheries' proposed actions to be consistent with their coastal zone management programs. The State of Georgia objects to the consistency determination due to the continuing operation of the shark gillnet fishery in Federal waters impacting resources shared by adjacent state waters. NOAA Fisheries shares the State of Georgia's concern regarding the impact of the shark gillnet fishery on sea turtles, marine mammals, and sport fish. However, data currently available do not indicate high bycatch and bycatch mortality of protected species and other finfish in this fishery. Because the incidental capture of endangered species in the shark gillnet fishery is regulated under the ESA and the BiOp did not conclude that continuation of the shark gillnet fishery would jeopardize any endangered or threatened resources, NOAA Fisheries is

not prohibiting the use of this gear at this time. This finding is consistent with national standard 2 which requires that management measures be based on the best scientific information available and with the conclusions of the BiOp. Thus, NOAA Fisheries finds that the final regulations promulgated in this rulemaking are consistent with Georgia's Coastal Zone Management Program to the maximum extent practicable.

Notwithstanding any other provisions of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This action contains new collection-of-information requirements subject to the PRA and which have been approved under OMB control number 0648–0452. The requirements for pelagic longline vessel operators to report a sea turtle mortality within 48 hours of returning to port and for shark gillnet operators to report interactions with listed whale species are estimated to take 5 minutes per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NOAA Fisheries (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

Under 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA Fisheries, finds good cause to waive the 30–day delay in effectiveness for certain turtle mitigation measures for the Atlantic longline fishery. A waiver of the delay in effectiveness for the final rule is needed for the requirements concerning the NED area closure, gangion length, and posting the sea turtle handling and release guidelines to ensure the uninterrupted protection of sea turtles in the fishery following the expiration of an emergency rule extension (66 FR 64378) on July 8, 2002. The emergency rule and its extension imposed requirements, including a gangion placement measure, that were part of the RPA and other required measures in the BiOp. In late November 2001, NMFS completed an experiment in the NED area that tested gangion placement and other bycatch reduction measures identified in the BiOp. Data from this experiment were required for this rulemaking, but were not available in final format until mid-April, 2002. As a result of this data, this final rule relieves vessels from the gangion placement measure imposed under the emergency rule. Given the availability of the 2001 experimental fishery data, the need for public comment periods on the proposed and final rules and draft and final environmental impact statements, and the July 8, 2002, expiration date of the emergency rule extension, good cause exists for a waiver of the 30–day delay in effectiveness for the above-referenced requirements. All sea turtle and marine mammal mitigation measures in this final rule not previously implemented by the emergency rule extension will take effect 30 days or more from the publication of this rule.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: July 2, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs,National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.2, new definitions for ''Bottom longline,'' ''Corrodible hook,'' ''Floatline,'' ''Gangion,'' ''Net check,'' and ''Northeast distant closed area'' are added alphabetically to read as follows:

§ 635.2 Definitions.

* * * * *

Bottom longline means a longline that is deployed with enough weights and/or anchors to maintain contact with the ocean bottom.

* * * * *

Corrodible Hook means a fishing hook composed of any material other than stainless steel.

* * * * *

Floatline means a line attached to a buoyant object that is used to support the mainline of a longline at a specific target depth.

Gangion means a line that serves to attach a hook, suspended at a specific target depth, to the mainline of a longline.

* * * * *

Net check refers to a visual inspection of a shark gillnet where the vessel operator transits the length of the gear and inspects it either with a spotlight or by pulling up the gear.

* * * * *

Northeast Distant closed area means the Atlantic Ocean area bounded by straight lines connecting the following coordinates in the order stated: 35°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 60°00′ W. long.

* * * * *

3. In § 635.5, paragraphs (a)(4) and (5) are added to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(4) *Pelagic longline sea turtle reporting.* The operators of vessels that have pelagic longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, and tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico are required to report any sea turtles that are dead when they are captured or that die during capture to the NOAA Fisheries Southeast Fisheries Science Center Observer Program, at a number designated by NOAA Fisheries, within 48 hours of returning to port, in addition to submitting all other reporting forms required by this part and 50 CFR parts 223 and 224.

(5) *Shark gillnet whale reporting.* The vessel operators of vessels that are shark gillnetting, as defined by 50 CFR 229.2, and that have been issued, or are required to have, shark directed or incidental limited access permits for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico are required to contact the NOAA Fisheries Southeast Regional Office, at a number designated by NOAA Fisheries, if a listed whale is taken, in addition to submitting all other reporting forms required by this part and 50 CFR part 229.

* * * * *

4. In § 635.21, paragraphs (a)(3), (c)(5)(iii), (d)(3)(v), and (d)(3)(vi) are added and paragraphs (c)(2) and (d)(3)(iv) are revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

(a) * * *

(3) Operators of all vessels that have pelagic or bottom longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must post inside the wheelhouse the sea turtle handling and release guidelines provided by NOAA Fisheries.

* * * * *

(c) * * *

(2) If pelagic longline gear is on board a vessel issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in:

(i) The Northeastern United States closed area from June 1 through June 30 each calender year;

(ii) In the Charleston Bump closed area from March 1 through April 30, 2001, and from February 1 through April 30 each calender year thereafter;

(iii) In the East Florida Coast closed area at any time beginning at 12:01 a.m. on March 1, 2001;

(iv) In the DeSoto Canyon closed area at any time beginning at 12:01 a.m. on November 1, 2000;

(v) In the Northeast Distant closed area at any time beginning at 12:01 a.m. on July 9, 2002.

* * * * *

(5) * * *

(iii) *Gear modifications.* The following measures are required of vessel operators to reduce the incidental capture and mortality of sea turtles:

(A) *Gangion length.* The length of any gangion on vessels that have pelagic longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must be at least 10 percent longer than any floatline length if the total length of any gangion plus the total length of any floatline is less than 100 meters.

(B) *Corrodible hooks.* Vessels that have pelagic longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must only have corrodible hooks on board.

* * * * *

(d) * * *

(3) * * *

(iv) While fishing for Atlantic sharks with a gillnet, the gillnet must remain attached to the vessel at one end, except during net checks.

(v) Both the observer and vessel operator are responsible for sighting whales. If a listed whale is taken, the vessel operator must cease fishing operations immediately and contact NOAA Fisheries as required in § 635.5(a)(5).

(vi) Vessel operators are required to conduct net checks every 0.5 to 2 hours to look for and remove any sea turtles or marine mammals.

* * * * *

5. In § 635.71, paragraphs (a)(36) and (37) are added to read as follows:

§ 635.71 Prohibitions.

(a) * * *

(36) Fish with bottom or pelagic longline and shark gillnet gear for HMS without adhering to the gear operation and deployment restrictions required in 50 CFR 635.21.

(37) Fail to report to NOAA Fisheries, at the number designated by NOAA Fisheries, the incidental capture of listed whales with shark gillnet gear and sea turtle mortalities associated with pelagic longline gear as required by 50 CFR 635.5.

* * * * *

[FR Doc. 02–17104 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010313064–1064–01; I.D. 070102E]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Commercial Haddock Harvest

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of removal of haddock daily trip limit.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), is suspending the haddock daily trip limit for the groundfish fishery. The Regional Administrator has projected that less than 75 percent of the haddock target total allowable catch (TAC) will be harvested for the 2002 fishing year under the restrictive daily trip limit. This action is intended to allow fisherman to catch more of the haddock TAC, without exceeding it.

DATES: Effective July 5, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Warren, Fishery Policy Analyst, 978–281–9347.

SUPPLEMENTARY INFORMATION: Framework Adjustment 33 to the NE Multispecies Fishery Management Plan, which became effective May 1, 2000, implemented the current haddock trip limit regulations (65 FR 21658, April 24, 2000). To ensure that haddock landings do not exceed the appropriate TAC, Framework 33 established a haddock trip limit of 3,000 lb (1,360.8 kg) per NE Multispecies DAS fished and a maximum trip limit of 30,000 lb (13,608 kg) of haddock for the period May 1 through September 30; and 5,000 lb (2,268 kg) of haddock per DAS and 50,000 lb (22,680 kg) per trip from October 1 through April 30. Framework 33 also provided a mechanism to adjust the haddock trip limit based upon the percentage of TAC that is projected to be harvested. Section 648.86(a)(1)(iii)(B) specifies that, if the Regional Administrator has projected that less than 75 percent of the haddock TAC will be harvested in the fishing year, the trip limit may be adjusted. Further, this section stipulates that NMFS will publish a notification in the **Federal Register** informing the public of the date of any changes to the trip limit.

The Regional Administrator has projected that less than 75 percent of the 2002 fishing year haddock TAC will be harvested by April 30, 2003, and has therefore determined that suspending the daily haddock trip limit through April 30, 2003, while retaining the 30,000–lb (13,608–kg) and 50,000–lb (22,680–kg) per trip possession limits, for May 1–September 30, 2002, and October 1, 2002 - April 30, 2003, respectively, will provide the industry with the opportunity to harvest at least 75 percent of the TAC for the 2002 fishing year. In order to prevent the TAC from being exceeded, the Regional Administrator may adjust this possession limit again through publication of a notification in the **Federal Register**, pursuant to § 648.86(a)(1)(iii).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 2, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17102 Filed 7–3–02; 12:53 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 131
Tuesday, July 9, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 212, and 245

[INS No. 2124–01; AG Order No. 2596–2002]

RIN 1115–AG14

Adjustment of Status for Certain Aliens From Vietnam, Cambodia, and Laos in the United States; Waiver of Criminal Grounds of Inadmissibility

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Department of Justice (Department) regulations to provide for the adjustment of status to that of lawful permanent resident for certain aliens from Vietnam, Cambodia, and Laos. On November 6, 2000, Public Law 106–429, the Foreign Operations Appropriations Act of 2001, was signed into law. Section 586 of Public Law 106–429 provides for the adjustment of status for certain aliens from Vietnam, Cambodia, and Laos. Eligible applicants must have been physically present in the United States both prior to and on October 1, 1997, and inspected and paroled into the United States before October 1, 1997, either from Vietnam under the Orderly Departure Program, from a refugee camp in East Asia, or from a displaced persons camp administered by the United Nations in Thailand. This rule proposes to add regulations governing eligibility, evidence, and application and adjudication procedures, and also to add a new section in the regulations that lists the types of evidence an alien may use to demonstrate his or her physical presence in the United States on a specific date. Finally, this rule proposes a general amendment to the regulatory standards for waivers of the criminal grounds of inadmissibility under section 212(h) of the Act.

DATES: Written comments must be submitted on or before September 9, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street NW, Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS number 2124–01 on your correspondence. Comments may also be submitted to the Service electronically at this address: *insreg@usdoj.gov.* When submitting comments electronically please include INS No. 2124–01 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: For questions regarding the Service, contact Michael Valverde, Residence and Status Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 3214, Washington, DC 20536, Telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is Section 568 of Public Law 106–429?

On November 6, 2000, the President signed Public Law 106–429, the Foreign Operations Appropriations Act of 2001. Section 586 of Public Law 106–429 provides for adjustment of status to that of lawful permanent resident for 5,000 eligible natives or citizens of Vietnam, Cambodia, and Laos.

Why Is This Rule a Proposed Rule?

The Department of Justice (Department) is issuing this rule as a proposed rule in order to ensure that all aliens eligible for benefits under section 586 of Public law 106–429 have an equal opportunity to obtain those benefits. Section (a)(1) of Public Law 106–429 sets forth a time-limited application period (3 years from the date the rule is promulgated) and section (d) limits the number of total adjustments. The Department believes it is necessary to solicit comments on the regulations implementing this law prior to making the regulations effective. The Department seeks comments on all aspects of the proposed regulations, including, but not limited to, criteria for eligibility, evidentiary standards, counting methodology, application procedures, and appeal rights. After the Department has reviewed the comments, the regulations will be finalized via a final rule published in the **Federal Register**, and the application period will begin.

Who Is Eligible To Adjust Status to That of Lawful Permanent Resident Under Section 586 of Public Law 106–429?

The Department's proposed regulations will codify the eligibility requirements for adjustment of status under section 586 of Public Law 106–429 at 8 CFR 245.21(a). To be eligible, an alien must demonstrate that he or she:

(1) Is a citizen or native of Vietnam, Cambodia, or Laos;

(2) Was inspected and paroled into the United States before October 1, 1997;

(3) Was physically present in the United States prior to and on October 1, 1997;

(4) Was paroled into the United States:

- From Vietnam under the auspices of the Orderly Departure Program (ODP);
- From a refugee camp in East Asia; or
- From a displaced persons camp administered by the United Nations High Commissioner for Refugees (UNHCR) in Thailand.

(5) Applies for adjustment of status under section 586 of Public Law 106–429 during the period beginning on the ''effective date'' specified when this proposed rule is published as a final rule, and ending 3 years from the effective date, and pays all appropriate fees; and

(6) Is otherwise eligible to receive an immigrant visa and otherwise admissible to the United States for permanent residence except for those grounds of inadmissibility that do not apply or that are waived.

What Is the Process of Adjustment of Status for Refugees?

The adjustment process for refugees is simple: One year after the alien has entered the United States as a refugee, he or she can apply to adjust status to lawful permanent resident (LPR) (see also 8 CFR 209.1). For those qualified aliens who have been denied refugee status but who fall into the Lautenberg category and are paroled into the United States as such, the process is similar—they can apply for LPR one year after

entry. (For a discussion of the Lautenberg category, see the section below ''What is the Lautenberg Amendment?'' See also, 8 CFR 245.7)

This rule, by contrast, covers aliens who are not eligible to adjust to LPR status under either of the above provisions. This rule is intended to benefit aliens whose relatives have died or emigrated or never formed a qualifying relationship with the alien, those aliens paroled into the United States who have no relatives (such as former employees of the United States government), and those who were never formally denied refugee status. For the vast majority of the rule's beneficiaries, there is no route to adjustment other than this provision.

Is There a Limit on the Number of Adjustments Under Section 586 of Public Law 106–429?

Yes, under section 586 of Public Law 106–429, the Attorney General has the authority to adjust the status of 5,000 aliens. Generally, the Department will adjudicate applications in the order in which they are submitted. The Service will assign a number to every application properly filed. The number will be assigned in ascending order, according to the filing date, except that, as discussed below, the Service will assign a number only if and when a necessary waiver is granted.

In the exercise of its discretion, the Service will adjudicate applications that do not require adjudication of a waiver to overcome any criminal, fraud, immigration violator, citizenship ineligibility, or illegal voting grounds of inadmissibility before those adjustment applications that do require such a waiver adjudication. These grounds of inadmissibility are identified in § 245.21(m)(3). The Department is of the view that applicants who seek waivers of such grounds have, by definition, violated the law in some way and are requesting the Attorney General to use his discretion to excuse that violation. Such applicants are not entitled to be given the same priority as those who have not engaged in conduct that would render them inadmissible to the United States and, accordingly, the Service will assign a priority to such applications according to the date that the requested waivers are granted, if that is the result, rather than the filing date of the application for adjustment.

Each alien granted adjustment of status under section 586 will count toward the 5,000 limit. The Service will monitor the total number of approvals in order to ensure that all applications pending appeal that are placed earlier in the queue could be approved within the 5,000 cap if the applications are granted on appeal. The Department's regulations concerning the 5,000 limit are at 8 CFR 245.21(m). The Department recommends that eligible aliens submit their applications as soon as possible after the final rule is promulgated in order to maximize their likelihood of getting a space within the 5,000 limit.

When Can Aliens File for Adjustment of Status Under Section 586 of Public Law 106–429?

Aliens may apply during the 3-year application period, which commences on the effective date of any final regulations promulgated pursuant to section 586 of Public Law 106–429. Applications received prior to the beginning of the application period will be rejected and returned to the applicant. The Department's proposed regulations regarding the application period are at 8 CFR 245.21(b)(1).

What Was the Orderly Departure Program (ODP)?

The ODP originated in 1979 under the initiative of the UNHCR in order to provide a safe, legal alternative to dangerous departures by boat, or over land, from Vietnam. Individuals who sought to leave Vietnam registered with the ODP office, situated in Bangkok, Thailand, where a case file was opened. Individuals, and close family members, were assigned tracking numbers, known as IV files. The first legal departure from Vietnam via the ODP was in December 1980.

Within the ODP, there were three subprograms: (1) The Regular Subprogram, which was reserved for applicants seeking family reunification and other individuals who demonstrated close connections with United States policies and programs prior to 1975; (2) the Reeducation Detainee Subprogram (which came to be known as the HO subprogram); and (3) the Amerasian Subprogram, for individuals who were fathered by Americans.

As a humanitarian response to an increasing demand for emigration from Vietnam, it was Service policy to offer Public Interest Parole to certain classes of applicants from within the ODP, including those who had been denied refugee status and those who were the beneficiaries of non-current relative visa petitions.

Many such parolees were ineligible, subsequent to arrival in the United States, to adjust their status under the provisions of section 599E of the Foreign Operations, Export Financing, and Related Appropriations Act of 1990 (Pub. L. 101–167) (the Lautenberg Amendment).

What Is the Lautenberg Amendment?

The Lautenberg Amendment is a means for aliens from certain nations (including Vietnam, Cambodia, and Laos) who have been denied refugee status but who are nevertheless granted a Public Interest Parole into the United States to adjust status to LPR. The beneficiaries of section 586 do not fall into this category because they were never considered for, and thus never denied, refugee status.

Parole status is technically a grant of entry into the United States and is different than admission. Aliens who have been admitted to a specific immigrant or nonimmigrant status (LPR, Refugee, H–1B, etc) may only be removed if the Service meets its burden of proof to show that the alien is deportable. In contrast, an alien in parole status is still technically facing admission, and if the Service places such an alien in removal proceedings, the burden of proof lies with the alien to show admissibility.

The Lautenberg Amendment specifically authorized individuals to apply for adjustment of status 1 year after arrival in the United States as a parolee. However, the language of the Lautenberg Amendment limited the ability to apply for adjustment to those individuals who had been paroled subsequent to a denial of refugee status. Therefore, individuals who were paroled as the beneficiary of a non-current relative visa petition could not apply for adjustment of status until a visa number became available. Additionally, dependent family members were paroled in the interest of maintaining family unity. These latter individuals have been left in a virtual indefinite parolee status because they were not beneficiaries of a specific relative visa petition.

The policy of offering Public Interest Parole ceased on September 30, 1994, although individuals previously authorized parole continued to travel to the United States after the date of cessation.

How Do Applicants Demonstrate That They Were Paroled Under the Auspices of the ODP?

Persons eligible for the benefits of section 586 of Public Law 106–429 because they were paroled under the auspices of the ODP may locate their assigned tracking number, the IV file number, in several places. The number appears on the parole authorization letter, the transportation letter, or the Form I–94, Arrival-Departure Record,

issued to them. If the applicant no longer has any of these documents, the Department has a complete database for all individuals processed under the ODP and can verify an applicant's claim if requested in writing along with the Form I–485.

Verifying the alien's claim that he or she entered the United States under the auspices of the ODP should not add a significant time period to the total time it takes to adjudicate the application. There is no fee for making this request if it is made as part of the application for benefits under this provision.

How Do Applicants Demonstrate That They Were Paroled From a Refugee Camp in East Asia?

Applicants who were paroled under different auspices than the ODP will have an identifiable United States Refugee Program (USRP) file number. That file number is prefaced with the first initial of the country of first asylum, *e.g.,* TXXXXXX = Thailand; SXXXXXX = Singapore; IXXXXXX = Indonesia, and so forth. The number appears on the Form I–94 issued to them.

How Do Applicants Demonstrate That They Were Paroled From a Displaced Persons Camp in Thailand That Was Administered by the UNHCR?

This category comprises primarily Cambodian nationals who were initially in camps along the Thai-Cambodian border. These individuals should have a unique USRP file number representing Thailand, *i.e.,* TXXXXXX. Additionally, applicants from displaced persons camps would normally have the designation of HP–1, HP–2, or HP–3 on the Form I–94, or elsewhere in the Alien file (''A'' file). The ''A'' number and ''HP'' designation appear on the Form I–94 issued to them.

If the applicant no longer has his or her Form I–94, he or she may request the Department to do a search of its files to determine whether that alien ever received either number or designation in writing along with the Form I–485.

What Grounds of Inadmissibility Do Not Apply When Applying for Adjustment of Status Under Section 586 of Public Law 106–429?

The grounds of inadmissibility found at section 212(a)(4) of the Immigration and Nationality Act (Act), relating to public charge; (a)(5), relating to labor certification requirements and certifications for foreign healthcare workers; (a)(7)(A), relating to visa and travel documents; and (a)(9), relating to prior removals and unlawful presence, do not apply to applicants for adjustment of status under section 586 of Public Law 106–429.

What Grounds of Inadmissibility May Be Waived When Applying for Adjustment of Status Under Section 586 of Public Law 106–429?

Section 586(c) of Public Law 106–429 authorizes the Attorney General to waive the grounds of inadmissibility found at section 212(a)(1) of the Act, relating to health; (a)(6)(B), (a)(6)(C), and (a)(6)(F), relating to failure to attend removal proceedings, misrepresentation, and document fraud violations, respectively; (a)(8)(A), relating to citizenship ineligibilities; and (a)(10)(B) and (a)(10)(D), relating to guardians of helpless aliens and unlawful voting. This waiver may be granted by the Attorney General (or by the Service as the Attorney General's delegate), in the exercise of his discretion, to prevent extreme hardship to the applicant, or to his or her United States citizen or lawful permanent resident spouse, parent, son, or daughter.

In addition to section 586(c), an individual seeking to adjust status under Public Law 106–429 may apply for any other immigrant waiver authorized under section 212 of the Act, if eligible. When a showing of extreme hardship is required for a waiver under any provision of section 212 of the Act, that hardship must be to one or more of the applicant's United States citizen or lawful permanent resident family members specified in that provision.

In some cases, the section 212 waiver supplements the provisions of section 586(c), while in others, such as criminal cases, section 212(h) of the Act is the exclusive means of relief. For example, individuals who are inadmissible on any of the medical grounds of section 212(a)(1)(A) of the Act have the option of applying for a waiver under section 212(g)(1),(2), or (3) of the Act, as applicable. Those individuals who are not eligible to apply under section 212(g) of the Act may apply for a waiver under section 586(c) of Public Law 106–429, if they can establish the requisite extreme hardship. In contrast, the waiver provision of section 586(c) does not include any of the criminal grounds of section 212(a)(2) of the Act; however, section 212(h) of the Act authorizes a waiver in limited cases.

It is important to note that waivers of inadmissibility are granted in the discretion of the Attorney General. The Board of Immigration Appeals has held that, in assessing whether an applicant has met the burden that a waiver is warranted in the exercise of discretion, the adjudicator must balance adverse factors evidencing inadmissibility as a lawful permanent resident with the social and humane considerations presented to determine if the grant of relief appears to be in the best interests of the United States. *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996) (involving a waiver under section 212(h)(1)(B) of the Act). Establishment of extreme hardship and eligibility for a waiver requiring a showing of such hardship does not create an entitlement to the relief sought. *Id.*; *Matter of Cervantes-Gonzalez*, Int. Dec. 3380 (BIA 1999). Extreme hardship, once established, is but one favorable discretionary factor to be considered. *Id.*

Most recently, in the context of a case involving a waiver of a criminal ground of inadmissibility under section 209(c) of the Act, the Attorney General determined that favorable discretion should not be exercised for waivers involving violent or dangerous individuals, except in extraordinary circumstances. Extraordinary circumstances include situations where the alien has established exceptional and extremely unusual hardship, or situations where there are overriding national security or foreign policy considerations. Nevertheless, depending on the gravity of the underlying offense, the equities presented in such extraordinary circumstances may still be insufficient. *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002).

In view of these considerations, this proposed rule amends 8 CFR 212.7 to provide a general rule that the Service will exercise discretion in favor of the applicant in section 212(h) waiver cases that involve violent or dangerous crimes only in extraordinary circumstances. Moreover, depending on the nature and severity of the underlying offense to be waived, the Attorney General retains the discretion to determine that the mere existence of extraordinary circumstances is insufficient to warrant the grant of a waiver.

How Does an Individual Apply for the Waiver?

In order to obtain a waiver of one or more grounds of inadmissibility, an applicant must file Form I–601, Application for Waiver of Grounds of Excludability, with the Form I–485, Application to Register Permanent Residence or Adjust Status. As mentioned previously under the heading, ''Is there a limit on the number of adjustments under section 586 of Public Law 106–429?'', the Department may give preference to those applicants who do not need a waiver of inadmissibility over certain applicants who do.

Does an Applicant Have To Demonstrate That He or She Was Physically Present in the United States Prior to October 1, 1997?

Yes, however an eligible applicant will be able to meet this requirement when he or she demonstrates that he or she was paroled into the United States via one of the three qualifying programs. The documentation demonstrating that the applicant was paroled into the United States via one of the three qualifying programs will contain a date. If the date of the alien's parole was prior to October 1, 1997, the Department will consider the applicant to have met the requirement that the applicant was physically present in the United States prior to October 1, 1997.

How Can an Applicant Demonstrate That He or She Was Physically Present in the United States on October 1, 1997?

Applicants for adjustment of status under section 586 of Public Law 106–429 must submit, at the time they file the application for adjustment of status, evidence that they were physically present in the United States on October 1, 1997.

The Act is silent as to the methods by which an applicant may demonstrate his or her physical presence in the United States on that date. Increasingly, adjustment of status provisions of the immigration laws are enacted with the requirement that applicants demonstrate their physical presence in the United States on a specific date (most recently, for example, the amendments to section 245(i) of the Act). The Department believes it is appropriate at this time to codify a single regulatory standard for demonstrating an alien's physical presence on a particular date. This is similar to the common standard for evidence, testimony, signature, and other requirements applicable to a wide range of applications and petitions. This rule adds a new § 245.22 that would provide guidance to aliens who need to demonstrate physical presence in the United States on any specific date (cross-referenced in proposed § 245.21(g)(2)). This new section regarding evidence largely corresponds to the existing regulations at 8 CFR 245.15(i) for aliens who must demonstrate physical presence on a specific date for purposes of the Haitian Refugee Immigrant Fairness Act of 1998, section 902 of Division A of Public Law 105–277 (HRIFA). The rule incorporates, in part, the forms of documentation accepted for HRIFA applicants regarding physical presence (8 CFR 245.15(i) and (j)(2)) and adopts them as examples of possible proof of physical presence for adjustment of status under section 586 of Public Law 106–429. The Department is also soliciting comments on what type of evidence can be best used to demonstrate an alien's physical presence in the United States for a specific date (in this case October 1, 1997).

Are the Dependents of Aliens Eligible To Adjust Status Under Section 586 of Public Law 106–429 Eligible To Adjust Status?

Section 586 of Public law 106–429 does not provide for the derivative adjustment of status for the spouse and children of aliens who adjust status under this law. To obtain lawful permanent resident status under this law, the spouse or child must be eligible under the terms of this law in his or her own right, and must apply on his or her own behalf. To the extent possible, the Service will adjudicate applications from family members at the same time.

If an alien who adjusts status to that of lawful permanent resident (LPR) under section 586 of Public Law 106–429 has an alien spouse, child, or unmarried son or daughter who is not eligible in his or her own right, the LPR may file Form I–130, Petition for Alien Relative, to begin the regular immigration process for the spouse, child, or unmarried son or daughter.

Where and How Do Eligible Aliens File for Adjustment of Status Under Section 586 of Public Law 106–429?

When the regulations are effective and the 3-year application period begins, the Service will provide aliens eligible to adjust status to that of lawful permanent resident under section 586 of Public Law 106–429 with an address for the filing of Form I–485.

Applicants must be physically present in the United States, and must submit the associated filing fee, currently $255 ($160 for applicants under 14 years of age), or request that the fee be waived pursuant to 8 CFR 103.7(c). Applicants ages 14 through 79 must also submit a $50 fingerprinting fee. Under Part 2, question h of Form I–485, applicants must write ''INDOCHINESE PAROLEE P.L. 106–429'' to indicate that they are applying based on this provision.

Is an Alien Currently in Proceedings Eligible To Apply?

An alien in proceedings who believes he or she is eligible for adjustment of status under section 586 of Public Law 106–429 may apply directly to the Service. In order to be eligible, however, an applicant for adjustment of status must be otherwise admissible to the United States. The Department notes that, depending on the alien's circumstances and the charges brought, the immigration proceedings may have an effect on the alien's admissibility. If an alien is found inadmissible on a ground that cannot be waived, the alien will not be eligible for adjustment of status under section 586.

In order to maintain control of the adjudication of applicants under the 5,000 limit, this rule provides that the Service will adjudicate all of these cases, not the immigration judges, or the Board of Immigration Appeals. Accordingly, an alien who is currently in proceedings who alleges eligibility for adjustment of status under section 586 of Public Law 106–429 should contact Service counsel to request Service consent to the filing of a joint motion for administrative closure of the immigration proceedings while any application filed is pending with the Service. The Service will exercise its discretion on a case-by-case basis in determining whether to join in motions for administrative closure.

Is an Alien Who Already Is the Subject of a Final Order of Removal, Deportation, or Exclusion Eligible To Apply Under Section 586 of Public Law 106–429?

An alien with a final order of removal, deportation, or exclusion who is eligible for adjustment of status under section 586 of Public Law 106–429 is not precluded from filing an application for adjustment of status with the Service. In order to be eligible, however, an applicant for adjustment of status must be otherwise admissible to the United States, and the Department notes that many aliens who are the subject of a final order of exclusion, deportation, or removal will be unable to satisfy that requirement. Only those aliens who have been found removable under circumstances that establish an alien's inadmissibility on a ground that may be waived under section 586 of Public Law 106–429 would be eligible for adjustment under this provision.

Moreover, this rule contains a substantial general constraint on the exercise of discretion to grant waivers under section 212(h) of the Act relating to violent or dangerous crimes and provides that aliens who require a waiver of criminal and certain other grounds of inadmissibility may be accorded a priority date only as of the date of the granting of the necessary waivers, rather than the date of the filing of the application.

Accordingly, this section does not automatically stay the order of removal, deportation, or exclusion. An eligible

alien may request that the district director with jurisdiction over his or her place of residence grant a stay of removal for the pendency of the application. The regulations governing such a request are found at 8 CFR 241.6. Only the Service may grant such a stay relating to an application for adjustment of status under this section.

If the Service approves the application for adjustment of status, the Service shall provide notice to the immigration judge or the Board. The filing of such notice will constitute the automatic re-opening of the alien's immigration proceedings, vacating the final removal order and terminating the re-opened proceedings.

How Can Applicants for Adjustment of Status Under Section 586 of Public Law 106–429 Obtain Employment Authorization While Their Application for Adjustment of Status Is Pending?

Applicants may obtain employment authorization based on their pending Form I–485 by submitting Form I–765, Application for Employment Authorization, and the $120 application fee unless the fee is waived. An applicant may submit Form I–765 simultaneously with the Form I–485 or at any time while the Form I–485 is pending. If the Service approves Form I–765, the applicant will be issued an employment authorization document.

Will an Applicant Filing an Application for Adjustment of Status Under Section 586 of Public Law 106–429 With the Service Be Required To Appear for an Interview?

The Service may require applicants for adjustment of status to appear for an interview, in the exercise of discretion.

Can an Applicant Travel Outside the United States While the Application Is Pending?

This rule does not prevent applicants with pending applications for adjustment of status from traveling abroad while their application is pending. However, in order to be eligible to lawfully re-enter the United States and avoid the abandonment of the application for adjustment of status, the Department will require that the alien obtain advance permission to travel (known as advance parole) from the Service prior to departing the United States. To obtain advance parole, applicants need to submit Form I–131, Application for a Travel Document, along with the $110 filing fee.

However, the Department notes that, if an alien under a final order of removal leaves the country, that would constitute a self-deportation unless the alien had previously been granted a waiver of any applicable grounds of inadmissibility before departing from the United States. Such an alien would need to obtain advance parole in addition to obtaining the necessary waivers of inadmissibility.

What Documentation Will Be Issued if the Adjustment of Status Application Is Approved?

After processing of the Form I–485 is completed, the Service will mail a notice of the decision to the applicant. If the application has been approved, the Service will issue a notice of approval instructing an alien to go to a local INS office to fill out Form I–89, which collects the necessary information to produce the Form I–551. To obtain temporary evidence of lawful permanent resident status, the applicant may present the original approval notice and his or her passport or other photo identification at his or her local Service office. The local Service office will issue temporary evidence of lawful permanent resident status after verifying the approval of the adjustment of status application. If the applicant is not in possession of an unexpired passport in which such temporary evidence may be endorsed, he or she should also submit two photographs meeting the Alien Documentation, Identification, and Telecommunication System specifications described on Form M–378 so that the Service may prepare and issue alternate temporary evidence of lawful permanent residence status.

What Date Will Be Recorded as the ''Record of Permanent Residence'' for Aliens Granted Lawful Permanent Resident Status Under Section 586 of Public Law 106–429?

Upon the approval of an application for adjustment of status, the Service will record the alien's admission for lawful permanent residence as of the date of the alien's inspection and parole before October 1, 1997, under the ODP, from a refugee camp in East Asia, or from a displaced persons camp administered by UNHCR in Thailand.

If the Service Denies an Alien's Application for Adjustment of Status Under Section 586 of Public Law 106–429, Is There an Appeal?

Yes, the alien may appeal to the Administrative Appeals Office when the Service denies an application. Procedures are contained in 8 CFR 103.3(a)(2).

When an alien appeals the denial of his or her application to adjust status under section 586 of Public Law 106–429, he or she will retain the same spot in the adjustment queue, with respect to the 5,000 limit on total adjustments under section 586 of Public Law 106–429. In other words, the Service will reserve space within the 5,000 limit on adjustments under section 586 of Public Law 106–429 for appellants who would have been able to adjust within the 5,000 limit had their applications been approved during the initial Service adjudication.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect certain individuals from Vietnam, Cambodia, and Laos by implementing the adjustment of status provisions of section 586 of Public Law 106–429. This rule will have no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The information collection requirement (Form I–485) contained in this rule was previously approved for use by the Office of Management and Budget (OMB). The OMB control number for this information collection is 1115–0053.

This proposed rule permits certain aliens from Vietnam, Cambodia, and Laos to adjust status. In addition to the evidence required by Form I–485, this rule at § 245.21(g)(2) requires applicants to demonstrate that they were physically present in the United States on October 1, 1997 by supplying the evidence outlined in § 245.22. This additional documentation is considered an information collection.

Written comments are encouraged and will be accepted until September 9, 2002. Your comments should address one or more of the following four points:

(1) Evaluating whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluating the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhancing the quality, utility, and clarity of the information to be collected; and

(4) Minimizing the burden of the collection of the information on those who are to respond, including through the use of any and all appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of information collection: New

(2) Title of Form/Collection: Application requirements for the adjustment of status under section 586 of Public Law 106–429.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: No form number, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Individuals. Section 586 of Public Law 106–429 allows certain aliens from Vietnam, Cambodia, and Laos to adjust status to lawful permanent resident. The information collection is necessary in order for the Service to make a determination that the eligibility requirements and conditions are met regarding the alien.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 5,000 respondents at 30 minutes per response.

(6) An estimate of the total of public burden (in hours) associated with the collection: Approximately 2,500 burden hours.

All comments and suggestions or questions regarding additional information should be directed to the Immigration and Naturalization Service, Regulations and Forms Services Division, 425 I Street, NW., Room 4034, Washington, DC 20536; Attention: Richard A. Sloan, Director, (202)514–3241.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visas, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356; 47 FR 14874, 15557, 3 CFR, 1982 Comp., p 166; 8 CFR part 2.

§ 103.1 [Amended]

2. Section 103.1(f)(3)(iii)(C) is amended by adding the phrase ''or section 586 of Public Law 106–429'' immediately after ''October 28, 1977''.

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227; 8 CFR part 2.

4. Section 212.7 is amended by adding paragraph (d) to read as follows:

§ 212.7 Waiver of certain grounds of inadmissibility.

* * * * *

(d) *Criminal grounds of inadmissibility involving violent or dangerous crimes.* The Service, in general, will exercise discretion not to grant waivers of the criminal grounds of inadmissibility involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of status adjustment would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

5. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

6. Section 245.15(i) is revised to read as follows:

§ 245.15 Adjustment of status of certain Haitian nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA).

* * * * *

(i) *Evidence of presence in the United States on December 31, 1995.* An alien seeking HRIFA benefits as a principal applicant must provide with the application evidence establishing the alien's presence in the United States on December 31, 1995. Such evidence may consist of the evidence listed in § 245.22.

* * * * *

7. Section 245.21 is added to read as follows:

§ 245.21 Adjustment of status of certain nationals of Vietnam, Cambodia, and Laos (section 586 of Pub. L. 106–429).

(a) *Eligibility.* The Service may adjust the status to that of a lawful permanent resident, a native or citizen of Vietnam, Cambodia, or Laos who:

(1) Was inspected and paroled into the United States before October 1, 1997;

(2) Was paroled into the United States from Vietnam under the auspices of the Orderly Departure Program (ODP), a refugee camp in East Asia, or a displaced person camp administered by the United Nations High Commissioner for Refugees (UNHCR) in Thailand;

(3) Was physically present in the United States prior to and on October 1, 1997;

(4) Files an application for adjustment of status in accordance with paragraph (b) of this section during the 3-year application period; and

(5) Is otherwise eligible to receive an immigrant visa and is otherwise admissible as an immigrant to the United States except as provided in paragraphs (e) and (f) of this section.

(b) *Applying for benefits under section 586 of Public Law 106–429.*

(1) *Application period.* The application period lasts from the effective date when this rule is published as a final rule until 3 years from the effective date. The Service will accept applications received after the end of the application period, but only if the 5,000 limit on adjustments has not been reached prior to the end of the 3-year application period, and the application bears an official postmark dated on or before the final day of the application period. Postmarks will be evaluated in the following manner:

(i) If the postmark is illegible or missing, the Service will consider the application to be timely filed if it is received on or before 3 business days after the end of the application period.

(ii) In all instances, the burden of proof is on the applicant to establish timely filing of an application.

(2) *Application.* An alien must be physically present in the United States to apply for adjustment of status under section 586 of Public Law 106–429. An applicant must submit Form I–485, Application to Register Permanent Residence or Adjust Status, along with the appropriate application fee contained in § 103.7(b)(1) of this chapter. Applicants who are 14 through 79 must also submit the fingerprinting service fee provided for in § 103.7(b)(1) of this chapter. Each application filed must be accompanied by evidence establishing eligibility as provided in paragraph (g) of this section; two photographs as described in the Form I–485 instructions; a completed Biographic Information Sheet (Form G–325A) if the applicant is between 14 and 79 years of age; a report of medical examination (Form I–693 and vaccination supplement) specified in § 245.5; and, if needed, an application for waiver of inadmissibility. Under Part 2, question h of Form I–485, applicants must write ''INDOCHINESE PAROLEE P.L. 106–429''. Applications must be sent to: INS Nebraska Service Center, PO Box 87485, Lincoln NE 68501–7485.

(c) *Applications from aliens in immigration proceedings.* An alien in pending immigration proceedings who believes he or she is eligible for adjustment of status under section 586 of Public Law 106–429 must apply directly to the Service in accordance with paragraph (b)(2) of this section. An immigration judge or the Board of Immigration Appeals Board may not adjudicate applications for adjustment of status under this section. An alien who is currently in immigration proceedings who alleges eligibility for adjustment of status under section 586 of Public Law 106–429 may contact Service counsel after filing their application to request the consent of the Service to the filing of a joint motion for administrative closure. Unless the Service consents to such a motion, the immigration judge or the Board may not defer or dismiss the proceeding in connection with section 586 of Public Law 106–429.

(d) *Applications from aliens with final orders of removal, deportation or exclusion.* An alien with a final order of removal, deportation, or exclusion who believes he or she is eligible for adjustment of status under section 586 of Public Law 106–429 must apply directly to the Service in accordance with paragraph (b) of this section.

(1) An application under this section does not automatically stay the order of removal, deportation, or exclusion. An alien who is eligible for adjustment of status under section 586 of Public Law 106–429 may request that the district director with jurisdiction over the alien grant a stay of removal during the pendency of the application. The regulations governing such a request are found at 8 CFR 241.6.

(2) The Service in general will exercise its discretion not to grant a stay of removal, deportation or exclusion with respect to an alien who is inadmissible on any of the grounds specified in paragraph (m)(3) of this section, unless there is substantial reason to believe that the Service will grant the necessary waivers of inadmissibiilty.

(3) An immigration judge or the Board may not grant a motion to re-open or stay in connection with an application under this section.

(4) If the Service approves the application, the approval will constitute the automatic re-opening of the alien's immigration proceedings, vacating of the final order of removal, deportation, or exclusion, and termination of the reopened proceedings.

(e) *Grounds of inadmissibility that do not apply.* In making a determination of whether or not an applicant is otherwise eligible for admission to the United States for lawful permanent residence under the provisions of section 586 of Public Law 106–429, the grounds of inadmissibility under sections 212(a)(4), (a)(5), (a)(7)(A), and (a)(9) of the Act shall not apply.

(f) *Waiver of grounds of inadmissibility.* In connection with an application for adjustment of status under this section, the alien may apply for a waiver of the grounds of inadmissibility under sections 212(a)(1), (a)(6)(B), (a)(6)(C), (a)(6)(F), (a)(8)(A), (a)(10)(B), and (a)(10)(D) of the Act as provided in section 586(a) of Public Law 106–429, if the alien demonstrates that a waiver is necessary to prevent extreme hardship to the alien, or to the alien's spouse, parent, son or daughter who is a U.S. citizen or an alien lawfully admitted for permanent residence. In addition, the alien may apply for any other waiver of inadmissibility under section 212 of the Act, if eligible. In order to obtain a waiver for any of these grounds, an applicant must submit Form I–601, Application for Waiver of Grounds of Excludability, with the application for adjustment.

(g) *Evidence.* Applicants must submit evidence that demonstrates they are eligible for adjustment of status under section 586 of Public Law 106–429. Such evidence shall include the following:

(1) A birth certificate or other record of birth;

(2) Documentation to establish that the applicant was physically present in the United States on October 1, 1997, under the standards set forth in § 245.22.

(3) A copy of the applicant's Arrival-Departure Record (Form I–94) or other evidence that the alien was inspected or paroled into the United States prior to October 1, 1997, from one of the three programs listed in paragraph (a)(2) of this section. Subject to verification, documentation pertaining to paragraph (a)(2) of this section is already contained

in Service files and the applicant may submit an affidavit to that effect in lieu of actual documentation.

(h) *Employment authorization.* Applicants who want to obtain employment authorization based on a pending application for adjustment of status under this section may submit Form I–765, Application for Employment Authorization, along with the application fee listed in 8 CFR 103.7(b)(1). If the Service approves the application for employment authorization, the applicant will be issued an employment authorization document.

(i) *Travel while an application to adjust status is pending.* An alien may travel abroad while an application to adjust status is pending. Applicants must obtain advance parole in order to avoid the abandonment of their application to adjust status. An applicant may obtain advance parole by filing Form I–131, Application for a Travel Document, along with the application fee listed in 8 CFR 103.7(b)(1). If the Service approves Form I–131, the alien will be issued Form I–512, Authorization for the Parole of an Alien into the United States. Aliens granted advance parole will still be subject to inspection at a Port-of-Entry.

(j) *Approval and date of admission as a lawful permanent resident.* When the Service approves an application to adjust status to that of lawful permanent resident based on section 586 of Public Law 106–429, the applicant will be notified in writing of the Service's decision. In addition, the record of the alien's admission as a lawful permanent resident will be recorded as of the date of the alien's inspection and parole into the United States, as described in paragraph (a)(1) of this section.

(k) *Notice of denial.* When the Service denies an application to adjust status to that of lawful permanent resident based on section 586 of Public Law 106–429, the applicant will be notified of the decision in writing.

(l) *Administrative review.* An alien whose application for adjustment of status under section 586 of Public Law 106–429 is denied by the Service may appeal the decision to the Administrative Appeals Office in accordance with 8 CFR 103.3(a)(2).

(m) *Number of adjustments permitted under this section*—(1) *Limit.* No more than 5,000 aliens may have their status adjusted to that of a lawful permanent resident under section 586 of Public Law 106–429.

(2) *Counting procedures.* Each alien granted adjustment of status under this section will count towards the 5,000 limit. The Service will assign a number, ascending chronologically by filing date, to all applications properly filed in accordance with paragraphs (b) and (g) of this section. Except as described in paragraph (m)(3) of this section, the Service will adjudicate applications in that order until it reaches 5,000 approvals under this part. Applications initially denied but pending on appeal will retain their place in the queue by virtue of their number, pending the Service's adjudication of the appeal.

(3) *Applications submitted with a request for the waiver of a ground of inadmissibility.* In the discretion of the Service, applications that do not require adjudication of a waiver of inadmissibility under section 212(a)(2), (a)(6)(B), (a)(6)(F), (a)(8)(A), or (a)(10)(D) of the Act may be approved and assigned numbers within the 5,000 limit before those applications that do require a waiver of inadmissibility under any of those provisions. Applications requiring a waiver of any of those provisions will be assigned a number chronologically by the date of approval of the necessary waivers rather than the date of filing of the application.

8. Section 245.22 is added to read as follows:

§ 245.22 Evidence to demonstrate an alien's physical presence in the United States on a specific date.

(a) *Evidence.* Generally, an alien who is required to demonstrate his or her physical presence in the United States on a specific date in connection with an application to adjust status to that of an alien lawfully admitted for permanent residence should submit evidence according to this section. In cases where more specific regulations or instructions for the form(s) relating to a particular adjustment of status provision have been issued, such regulations or instructions for the form(s) are controlling to the extent that they conflict with this section and must be followed.

(b) *The number of documents.* If no one document establishes the alien's physical presence on the required date, he or she may submit several documents establishing his or her physical presence in the United States prior to, and after that date.

(c) *Service-issued documentation.* To demonstrate physical presence on a specific date, the alien may submit Service-issued documentation. Examples of acceptable Service documentation include, but are not limited to, photocopies of:

(1) Form I–94, Arrival-Departure Record, issued upon the alien's arrival in the United States;

(2) Form I–862, Notice to Appear, issued by the Service on or before the required date;

(3) Form I–122, Notice to Applicant for Admission Detained for Hearing before Immigration Judge, issued by the Service on or prior to the required date, placing the applicant in exclusion proceedings under section 236 of the Act (as in effect prior to April 1, 1997);

(4) Form I–221, Order to Show Cause, issued by the Service on or prior to the required date, placing the applicant in deportation proceedings under sections 242 or 242A (redesignated as section 238) of the Act (as in effect prior to April 1, 1997); or

(5) Any application or petition for a benefit under the Act filed by or on behalf of the applicant on or prior to the required date which establishes his or her presence in the United States, or a fee receipt issued by the Service for such application or petition.

(d) *Government-issued documentation.* To demonstrate physical presence on the required date, the alien may submit other government documentation. Other government documentation issued by a Federal, State, or local authority must bear the signature, seal, or other authenticating instrument of such authority (if the document normally bears such instrument), be dated at the time of issuance, and bear a date of issuance not later than the required date. For this purpose, the term Federal, State, or local authority includes any governmental, educational, or administrative function operated by Federal, State, county, or municipal officials. Examples of such other documentation include, but are not limited to:

(1) A state driver's license;

(2) A state identification card;

(3) A county or municipal hospital record;

(4) A public college or public school transcript;

(5) Income tax records;

(6) A certified copy of a Federal, State, or local governmental record that was created on or prior to the required date, shows that the applicant was present in the United States at the time, and establishes that the applicant sought in his or her own behalf, or some other party sought in the applicant's behalf, a benefit from the Federal, State, or local governmental agency keeping such record;

(7) A certified copy of a Federal, State, or local governmental record that was created on or prior to the required date, that shows that the applicant was present in the United States at the time, and establishes that the applicant submitted an income tax return,

property tax payment, or similar submission or payment to the Federal, State, or local governmental agency keeping such record; or

(8) A transcript from a private or religious school that is registered with, or approved or licensed by, appropriate State or local authorities, accredited by the State or regional accrediting body, or by the appropriate private school association, or maintains enrollment records in accordance with State or local requirements or standards. Such evidence will only be accepted to document the physical presence of an alien who was in attendance and under the age of 21 on the specific date that physical presence in the United States is required.

(e) *Copies of records.* It shall be the responsibility of the applicant to obtain and submit copies of the records of any other government agency that the applicant desires to be considered in support of his or her application. If the alien is not in possession of such a document or documents, but believes that a copy is already contained in the Service file relating to him or her, he or she may submit a statement as to the name and location of the issuing Federal, State, or local government agency, the type of document and the date on which it was issued.

(f) *Other relevant document(s) and evaluation of evidence.* The adjudicator will consider any other relevant document(s) as well as evaluate all evidence submitted, on a case-by-case basis. The Service may require an interview when necessary.

(g) *Accuracy of documentation.* In all cases, any doubts as to the existence, authenticity, veracity, or accuracy of the documentation shall be resolved by the official government record, with records of the Service having precedence over the records of other agencies. Furthermore, determinations as to the weight to be given any particular document or item of evidence shall be solely within the discretion of the adjudicating authority.

Dated: July 2, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–17117 Filed 7–8–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–114–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra series airplanes. This proposal would require revising the airplane flight manual to advise the flightcrew to don oxygen masks as a first and immediate step following a cabin altitude alert. This action is necessary to prevent incapacitation of the flightcrew due to lack of oxygen. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 8, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–114–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002-NM–114-AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002-NM–114-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 25, 1999, a Learjet Model 35 series airplane operating under 14 CFR 135 departed Orlando International Airport en route to Dallas, Texas. Air traffic control lost communication with the airplane near Gainesville, Florida. Air Force and National Guard airplanes intercepted the airplane, but the flightcrews of the chase airplanes reported that the windows of the Model 35 series airplane were apparently frosted over, which prevented the flightcrews of the chase airplanes from observing the interior of the Model 35 series airplane. The flightcrews of the chase airplanes reported that they did not observe any damage to the airplane. Subsequently, the Model 35 series airplane ran out of fuel and crashed in South Dakota. To date, causal factors of the accident have not been determined. However, lack of the Learjet flightcrew's response to air traffic control poses the possibility of flightcrew incapacitation and raises concerns with the pressurization and oxygen systems.

Recognizing these concerns, the FAA initiated a special certification review (SCR) to determine if pressurization and oxygen systems on Model 35 series airplanes were certificated properly, and to determine if any unsafe design features exist in the pressurization and oxygen systems.

The SCR team found that there have been several accidents and incidents that may have involved incapacitation of the flightcrews during flight. In one case, the airplane flightcrew did not activate the pressurization system or don their oxygen masks and the airplane flew in excess of 35,000 feet altitude. In another case, the airplane flightcrews did not don their oxygen masks when the cabin altitude aural warning was activated. Further review by the SCR team indicates that the Airplane Flight Manual (AFM) of Learjet Model 35/36 series airplanes does not have an emergency procedure that requires donning the flightcrew oxygen masks when the cabin altitude aural warning is activated. Additional review has found that the AFMs of Model 35A and 36A series airplanes also do not contain appropriate flightcrew actions when the cabin altitude aural warning is activated. However, the AFMs do contain an abnormal procedure that allows the flightcrew to troubleshoot the pressurization system prior to donning the oxygen masks after the cabin altitude warning sounds. Troubleshooting may delay donning of the oxygen masks to the point that flightcrews may become incapable of donning their oxygen masks.

The SCR findings indicated that the most likely cause for incapacitation was hypoxia (lack of oxygen). The only other plausible cause of incapacitation is exposure to toxic substances. However, no evidence was found to support the existence of toxic substances.

Delayed response of the flightcrew in donning oxygen masks as a first and immediate action upon the activation of the cabin altitude warning horn could lead to incapacitation of the flightcrew.

A review of the emergency procedures in the AFM for Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra series airplanes revealed that the procedures for the flightcrew to don emergency oxygen masks is not the first and immediate step, but rather the second step when the warning horn sounds. Therefore, these airplanes may be subject to the same unsafe condition described above.

Explanation of Relevant Service Information

The manufacturer has issued Revision No. 17, dated July 25, 2000, to the Israel Aircraft Industries Astra SPX Airplane Flight Manual (AFM), and Temporary Revision (TR) No. 12, dated October 18, 2001, to the Israel Aircraft Industries Astra AFM. These revisions advise the flightcrew to don oxygen masks as a first and immediate step following a cabin altitude alarm to prevent incapacitation of the flightcrew due to lack of oxygen. Incorporation of the AFM revisions is intended to adequately address the identified unsafe condition. The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, classified the Astra SPX AFM revision as mandatory and issued Israeli airworthiness directive 21–00–11–18, dated November 27, 2000, to ensure the continued airworthiness of those airplanes in Israel.

U.S. Type Certification of the Airplane

These airplane models are manufactured in Israel and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require revising the Emergency Procedures section of the AFMs to advise the flightcrew to don oxygen masks as a first and immediate step following a cabin altitude alert.

Differences Between Proposed AD and Israeli Airworthiness Directive

Israeli airworthiness directive 21–00–11–18 applies only to Model Astra SPX series airplanes. The CAAI has advised us that they plan to issue a similar airworthiness directive on the Model 1125 Westwind Astra series airplanes. Since the Model 1125 Westwind Astra series airplanes are also subject to the identified unsafe condition, we have also included those airplane models in the applicability of this proposed AD.

Cost Impact

The FAA estimates that 90 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,400, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action''

under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Docket 2002–NM–114–AD.

Applicability: All Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent incapacitation of the flightcrew due to lack of oxygen, accomplish the following:

Revision of Airplane Flight Manual (AFM)

(a) Within 1 month after the effective date of this AD, revise the Emergency Procedures section of the FAA-approved AFM to include the following information; and operate the airplane in accordance with those procedures.

(1) For Model Astra SPX series airplanes: Include page II–2 of Israel Aircraft Industries Astra SPX AFM, Revision No. 17, dated July 25, 2000.

(2) For Model 1125 Westwind Astra series airplanes: Include Temporary Revision (TR) No. 12 of the Israel Aircraft Industries Astra AFM, dated October 18, 2001. This may be accomplished by inserting a copy of TR No. 12 into the AFM. When the TR has been incorporated into the general revisions of the AFM, the general revisions may be inserted into the AFM, provided the information contained in the general revision is identical to that specified in TR No. 12.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 2: The subject of this AD is addressed in Israeli airworthiness directive 21–00–11–18, dated November 27, 2000.

Issued in Renton, Washington, on June 28, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17080 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–88–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–300, –400, and –500 series airplanes. This proposal would require replacement of the hinge assemblies on certain escape slide compartments of the forward doors with new, stronger hinge assemblies. This action is necessary to prevent forward door escape slides from falling out of their compartments into the airplane interior and inflating, which could impede an evacuation in the event of emergency. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–88–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–88–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2780; fax (425) 227–1181.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–88–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–88–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of an incident on a Boeing Model 737–300 series airplane in which a forward door escape slide fell out of its compartment and inflated inside the passenger compartment of the airplane. Other operators have reported incidents in which the forward door escape slides dropped out of their ostensibly secured compartments. Investigation has revealed that the soft aluminum hinge assemblies on Model 737–300, –400, and –500 series airplanes are susceptible to deformation. A deformed hinge assembly could allow the escape slide to fall out of its compartment into the interior of the airplane. The released slide, which would automatically inflate, could impede an evacuation in the event of an emergency.

Airplanes Similar to Model 737–300 Series Airplanes

The hinge assemblies on certain escape slide compartments of the forward doors on certain Model 737–400 and 737–500 series airplanes are identical to those installed on certain Model 737–300 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–25–1430, dated February 22, 2001, which describes procedures for replacing the hinge assemblies on the stowage compartments for the forward door escape slides with new, stronger hinge assemblies. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Related Rulemaking

AD 96–18–04, amendment 39–9728 (61 FR 45878, August 30, 1996), requires accomplishment of the actions specified in Boeing Service Bulletin 737–25A1221 and Air Cruisers Service Bulletin 103–25–19. Those service bulletins are also cited in Boeing Service Bulletin 737–25–1430 as ''concurrent requirements.'' Because those ''concurrent'' actions are required by AD 96–18–04, they are not included in this proposed AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in Boeing Service Bulletin 737–25–1430, described previously.

Cost Impact

There are approximately 1,974 airplanes of the affected design in the worldwide fleet. The FAA estimates that 793 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $671 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $770,003, or $971 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–88–AD.

Applicability: Model 737–300, –400, and –500 series airplanes; certificated in any category; as listed in Boeing Service Bulletin 737–25–1430, dated February 22, 2001.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For

airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent forward door escape slides from falling out of their compartments into the airplane interior and inflating, which could impede an evacuation in the event of emergency, accomplish the following:

Hinge Assembly Replacement

(a) Within 24 months after the effective date of this AD, replace the hinge assemblies on the escape slide stowage compartments of the forward doors with new, stronger hinge assemblies, in accordance with Boeing Service Bulletin 737–25–1430, dated February 22, 2001.

Spare Parts

(b) As of the effective date of this AD, no person may install a hinge assembly, part number 65C30431–6 or 65C30431–7, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 28, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17081 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[REG–164754–01]

RIN 1545–BA44

Split-Dollar Life Insurance Arrangements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the income, employment, and gift taxation of split-dollar life insurance arrangements. The proposed regulations will provide needed guidance to persons who enter into split-dollar life insurance arrangements. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments must be received by October 7, 2002. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for October 23, 2002, must be received by October 9, 2002.

ADDRESSES: Send submissions to CC:ITA:RU (REG–164754–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–164754–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at *www.irs.gov/regs.* The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the section 61 regulations, please contact Elizabeth Kaye at (202) 622–4920; concerning the section 83 regulations, please contact Erinn Madden at (202) 622–6030; concerning the section 301 regulations, please contact Krishna Vallabhaneni at (202) 622–7550; concerning the section 7872 regulations, please contact Rebecca Asta at (202) 622–3940; and concerning the application of these regulations to the Federal gift tax, please contact Lane Damazo at (202) 622–3090. To be placed on the attendance list for the hearing, please contact LaNita M. Vandyke at (202) 622–7180.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224. Comments on the collection of information should be received by September 9, 2002. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in this proposed regulation are in § 1.7872–15(d)(2)(ii) and (j)(3)(ii). These collections of information are required by the IRS to verify consistent treatment by the borrower and lender of split-dollar loans with nonrecourse or contingent payments. In addition, in the case of a split-dollar loan that provides for nonrecourse payments, the collections of information are required to obtain a benefit. The likely respondents are parties entering into split-dollar loans with nonrecourse or contingent payments.

Estimated total annual reporting and/or recordkeeping burden: 32,500 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 17 minutes.

Estimated number of respondents and/or recordkeepers: 115,000.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

1. Current Law

Section 61 provides that gross income includes all income from whatever source derived. Section 1.61–2(d) describes the taxation of premiums paid by an employer or service recipient for life insurance on the life of an employee or independent contractor if the proceeds of the life insurance are payable to the beneficiary of the employee.

Section 83 provides rules for taxing a transfer of property in connection with the performance of services. Generally, if property is transferred to any person other than the service recipient in connection with the performance of services, the excess of the fair market value of such property (determined without regard to lapse restrictions) over the amount paid for such property is included in the gross income of the service provider in the first taxable year in which the service provider's rights in such property are either transferable or not subject to a substantial risk of forfeiture, whichever is applicable. Under § 1.83–1(a)(2), the cost of life insurance protection under a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection generally is taxable under section 61 and the regulations thereunder during the period such contract is substantially nonvested (that is, prior to the time when rights to the contract are either transferable or not subject to a substantial risk of forfeiture). The cost of such life insurance protection is the reasonable net premium cost, as determined by the Commissioner, of the current life insurance protection (as defined in § 1.72–16(b)(3)) provided by such contract. Under § 1.83–3(e), in the case of a transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, only the cash surrender value of the contract is considered property.

Section 163(h) disallows a deduction for personal interest paid or accrued during the taxable year for taxpayers other than corporations. For purposes of section 163(h), personal interest is any interest other than the following: interest paid or accrued on indebtedness properly allocable to a trade or business; any investment interest within the meaning of section 163(d); any interest which is taken into account under section 469 in computing passive income or loss; any qualified residence interest; any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment is in effect; and any interest allowable for deduction under section 221 (relating to interest on education loans).

Section 264(a)(1) provides that no deduction is allowed for premiums on any life insurance policy if the taxpayer is directly or indirectly a beneficiary under the policy. Section 264(a)(2) provides that no deduction is allowed, except as provided in section 264(e), for any interest paid or accrued on indebtedness with respect to a life insurance policy owned by the taxpayer and covering the life of any individual.

Section 301 provides that distributions of property made by a corporation to a shareholder with respect to its stock may constitute a dividend includible in the gross income of the shareholder.

Sections 163(e) and 1271 through 1275 provide rules for the treatment of original issue discount (OID) on debt instruments. In general, the holder and the issuer of a debt instrument take the OID into account as it accrues on the basis of the debt instrument's yield to maturity.

Section 7872 provides rules for certain direct and indirect below-market loans enumerated in section 7872(c)(1). The legislative history of section 7872 states that the term *loan* is to be interpreted broadly for purposes of section 7872, potentially encompassing ''any transfer of money that provides the transferor with a right to repayment.'' H.R. Rep. 98–861, 98th Cong., 2d Sess. 1018 (1984). In general, section 7872 recharacterizes a below-market loan (a loan in which the interest rate charged is less than the applicable Federal rate (AFR)) as an arm's-length transaction in which the lender makes a loan to the borrower at the AFR, coupled with a payment or payments to the borrower sufficient to fund all or part of the interest that the borrower is treated as paying on that loan. The amount, timing, and characterization of the imputed payments to the borrower under a below-market loan depend on the relationship between the borrower and the lender and whether the loan is characterized as a demand loan or a term loan. For example, in the case of a compensation-related below-market loan within the meaning of section 7872(c)(1)(B), the imputed payments are treated as payments of compensation.

Section 7872 generally provides that, in the case of any below-market loan that is a gift or demand loan subject to section 7872, forgone interest is treated as transferred from the lender to the borrower and retransferred from the borrower to the lender as interest on the last day of the calendar year for each year the loan is outstanding.

Section 7872 generally provides that, in the case of any below-market loan that is a term loan subject to section 7872, the lender is treated as having transferred, on the day the loan is made, an amount equal to the excess of the amount loaned over the present value of all payments which are required to be made under the terms of the loan. This amount is treated as retransferred by the borrower to the lender as OID over the term of the loan.

Rev. Rul. 64–328 (1964–2 C.B. 11) and Rev. Rul. 66–110 (1966–1 C.B. 12) address the Federal income tax treatment of a split-dollar life insurance arrangement under which an employer and an employee join in the purchase of a life insurance contract on the life of the employee and provide for the allocation of policy benefits. The rulings conclude that all economic benefits provided by the employer to the employee under such an arrangement are taxed to the employee. Thus, under the rulings, the employee generally must include in compensation income for each taxable year during which the arrangement remains in effect (i) the annual cost of the life insurance protection provided to the employee, reduced by any payments made by the employee for such life insurance protection, (ii) any policy owner dividends or similar distributions provided to the employee under the life insurance contract (including any dividends, as described in Rev. Rul. 66–110, used to provide additional policy benefits), and (iii) any other economic benefits provided to the employee under the arrangement. Neither ruling distinguishes, for tax purposes, between an arrangement in which the employer owns the life insurance contract (as in a so-called endorsement arrangement) and an arrangement in which the employee owns the contract (as in a so-called collateral assignment arrangement).

Rev. Rul. 79–50 (1979–1 C.B. 138) provides that, in a split-dollar life insurance arrangement similar to the one described in Rev. Rul. 64–328 between a corporation and a shareholder, the shareholder must include in income the value of the insurance protection in excess of the premiums paid by the shareholder, and must treat such amounts as provided in section 301(c).

Notice 2001–10 (2001–1 C.B. 459) set forth rules for the taxation of split-dollar life insurance arrangements in which the employee has an interest in the cash surrender value of the life insurance contract (so-called equity split-dollar life insurance arrangements). Notice 2001–10 generally provided, under specified conditions, for the taxation of equity split-dollar life insurance arrangements under either the rules of sections 61 and 83 or the rules of section 7872.

Notice 2002–8 (2002–4 I.R.B. 398), which revoked Notice 2001–10, provides guidance with respect to split-dollar life insurance arrangements entered into before the date final regulations concerning such arrangements are published in the **Federal Register**. The notice indicates that taxpayers may treat current life insurance protection provided under such an arrangement as an economic benefit and that the IRS will not treat the arrangement as having been terminated if the parties continue to treat and report the value of the current life insurance protection in that manner. Notice 2002–8 provides that, alternatively, the parties may treat the premiums or other payments as loans from the sponsor of the arrangement (typically, the employer) to the other party. In these cases, the IRS will not challenge a taxpayer's reasonable efforts to comply with the requirements of sections 1271 through 1275 and section 7872. In addition, all payments by the sponsor from the inception of the arrangement (reduced by any repayments to the sponsor) before the first taxable year in which the payments are treated as loans must be treated as loans entered into at the beginning of such first taxable year.[1]

[1] Notice 2002–8 also provides that an employer and employee may continue to use the P.S. 58 rates set forth in Rev. Rul. 55–747 (1955–2 C.B. 228), which was revoked by Notice 2001–10, only with respect to split-dollar life insurance arrangements entered into before January 28, 2002, in which a contractual arrangement between the employer and employee provides that the P.S. 58 rates will be used to determine the value of the current life insurance protection provided to the employee (or to the employee and one or more additional persons). Taxpayers may not use the P.S. 58 rates for ''reverse'' split-dollar life insurance arrangements or for split-dollar life insurance arrangements outside of the compensatory context.

Notice 2002–8 also describes the anticipated proposed regulations on split-dollar life insurance arrangements. The notice states that the rules would require taxation of a split-dollar life insurance arrangement under one of two mutually exclusive regimes: an economic benefit regime and a loan regime.

2. Overview of the Proposed Regulations

These proposed regulations provide guidance on the taxation of split-dollar life insurance arrangements, including equity split-dollar life insurance arrangements. The proposed regulations apply for purposes of Federal income, employment, and gift taxes. For example, the proposed regulations apply to a split-dollar life insurance arrangement between an employer and an employee, between a corporation and a shareholder, and between a donor and a donee.

Definition of Split-Dollar Life Insurance Arrangement

The proposed regulations generally define a split-dollar life insurance arrangement as any arrangement (that is not part of a group term life insurance plan described in section 79) between an owner of a life insurance contract and a non-owner of the contract under which either party to the arrangement pays all or part of the premiums, and one of the parties paying the premiums is entitled to recover (either conditionally or unconditionally) all or any portion of those premiums and such recovery is to be made from, or is secured by, the proceeds of the contract. This definition is intended to apply broadly and will cover an arrangement, for example, under which the non-owner of a contract provides funds directly to the owner of the contract with which the owner pays premiums, as long as the non-owner is entitled to recover (either conditionally or unconditionally) all or a portion of the funds from the contract proceeds (for example, death benefits) or has an interest in the contract to secure the right of recovery. In addition, the amount to be recovered by the party paying the premiums need not be determined by reference to the amount of those premiums. The definition is not intended to cover the purchase of an insurance contract in which the only parties to the arrangement are the policy owner and the life insurance company acting only in its capacity as issuer of the contract.

A special rule applies in the case of an arrangement entered into in connection with the performance of services. Under this special rule, a split-dollar life insurance arrangement is any arrangement (whether or not described in the general rule) between an owner and a non-owner of a life insurance contract under which the employer or service recipient pays, directly or indirectly, all or any portion of the premiums and the beneficiary of all or any portion of the death benefit is designated by the employee or service provider or is any person whom the employee or service provider would reasonably be expected to name as beneficiary. (Like the general rule, this special rule does not apply to any arrangement covered by section 79.) This special rule also applies to arrangements between a corporation and another person in that person's capacity as a shareholder in the corporation under which the corporation pays, directly or indirectly, all or any portion of the premiums and the beneficiary of all or a portion of the death benefit is a person designated by, or would be reasonably expected to be designated by, the shareholder. As in the case of the general definition, the special rule is not intended to cover the purchase of an insurance contract in which the only parties to the arrangement are the policy owner and the life insurance company acting only in its capacity as issuer of the contract.

Mutually Exclusive Regimes

As indicated in Notice 2002–8, the proposed regulations provide two mutually exclusive regimes for taxing split-dollar life insurance arrangements. A split-dollar life insurance arrangement (as defined in the proposed regulations) is taxed under either the economic benefit regime or the loan regime. The proposed regulations provide rules that determine which tax regime applies to a split-dollar life insurance arrangement.

Under the economic benefit regime (generally set forth in § 1.61–22 of the proposed regulations), the owner of the life insurance contract is treated as providing economic benefits to the non-owner of the contract. The economic benefit regime generally will govern the taxation of endorsement arrangements. In addition, a special rule requires the economic benefit regime to apply (and the loan regime not to apply) to any split-dollar life insurance arrangement if (i) the arrangement is entered into in connection with the performance of services, and the employee or service provider is not the owner of the life insurance contract, or (ii) the

arrangement is entered into between a donor and a donee (for example, a life insurance trust) and the donee is not the owner of the life insurance contract.

Under the loan regime (generally set forth in § 1.7872–15 of the proposed regulations), the non-owner of the life insurance contract is treated as loaning premium payments to the owner of the contract. Except for specified arrangements, the loan regime applies to any split-dollar loan (as defined in the proposed regulations). The loan regime generally will govern the taxation of collateral assignment arrangements.

Thus, in contrast to Rev. Rul. 64–328 and Rev. Rul. 66–110, the proposed regulations generally provide substantially different tax consequences to the parties depending on which party owns the life insurance contract.

The proposed regulations also require both the owner and the non-owner of a life insurance contract that is part of a split-dollar life insurance arrangement (as defined either in the general rule or the special rule) to fully and consistently account for all amounts under the arrangement under the rules of either § 1.61–22 or § 1.7872–15.

For purposes of both the general rule and the special rule, unless the non-owner's payments are certain payments made in consideration for economic benefits, general Federal income, employment, and gift tax principles apply to the arrangement. For example, if an employer pays premiums on a contract owned by an employee and the payments are not split-dollar loans under § 1.7872–15, the employee must include the full amount of the payments in gross income at the time they are paid by the employer to the extent that the employee's rights to the life insurance contract are substantially vested. Also, to the extent an owner's repayment obligation is waived, cancelled, or forgiven at any time under an arrangement that prior to the cancellation of indebtedness was treated as a split-dollar loan, the owner and non-owner must account for the amount waived, cancelled, or forgiven in accordance with the relationship between the parties. Thus, if the arrangement were in a compensatory context, the owner of the contract (the employee) and the non-owner (the employer) would account for the amount as compensation. *See OKC Corp. and Subsidiaries* v. *Commissioner*, 82 T.C. 638 (1984) (whether the cancellation of a debt is ordinary income to the debtor depends upon the nature of the payment); *Newmark* v. *Commissioner,* 311 F.2d 913 (2d Cir. 1962) (discharge of indebtedness constituted a payment for services in an employment situation).

Owners and Non-Owners

The proposed regulations provide rules for determining the owner and the non-owner of the life insurance contract. The owner is the person named as the policy owner. If two or more persons are designated as the policy owners, the first-named person generally is treated as the owner of the entire contract. However, if two or more persons are named as the policy owners and each such person has an undivided interest in every right and benefit of the contract, those persons are treated as owners of separate contracts. For example, if an employer and an employee jointly own a life insurance contract and share equally in all rights and benefits under the contract, they are treated as owning two separate contracts (and, ordinarily, neither contract would be treated as part of a split-dollar life insurance arrangement).

The general rule that the person named as the policy owner is treated as the owner of the life insurance contract is subject to two exceptions involving situations in which the only benefits available under the split-dollar life insurance arrangement would be the value of current life insurance protection (that is, so-called non-equity arrangements). Under the first exception, an employer or service recipient is treated as the owner of the contract under a split-dollar life insurance arrangement that is entered into in connection with the performance of services if, at all times, the only economic benefits available to the employee or service provider under the arrangement would be the value of current life insurance protection. Similarly, a donor is treated as the owner of a life insurance contract under a split-dollar life insurance arrangement that is entered into between a donor and a donee (for example, a life insurance trust) if, at all times, the only economic benefits available to the donee under the arrangement would be the value of current life insurance protection. The proposed regulations reserve on the issue of the consequences of a modification to these arrangements (for example, such as subsequently providing the employee or donee with an interest in the cash value of the life insurance contract). The IRS and the Treasury Department request comments on the rule the final regulations should adopt regarding the consequences of modifying these arrangements.

The non-owner is any person other than the owner of the life insurance contract having any direct or indirect interest in such contract (other than a life insurance company acting solely in its capacity as issuer of a life insurance contract). For example, an employee whose spouse is designated by the employer as the beneficiary of a life insurance contract that is owned by the employer would have an indirect interest in the contract and, therefore, would be treated as a non-owner.

3. Taxation Under the Economic Benefit Regime

a. In General

Section 1.61–22(d) provides that, as a general rule for split-dollar life insurance arrangements that are taxed under the economic benefit regime, the owner of the life insurance contract is treated as providing economic benefits to the non-owner of the contract, and those economic benefits must be accounted for fully and consistently by both the owner and the non-owner. The value of the economic benefits, reduced by any consideration paid by the non-owner to the owner, is treated as transferred from the owner to the non-owner. The tax consequences of that transfer will depend on the relationship between the owner and the non-owner. Thus, the transfer may constitute a payment of compensation, a distribution under section 301, a gift, or a transfer having a different tax character.

Non-Equity Split-Dollar Life Insurance Arrangements

Under a non-equity split-dollar life insurance arrangement, the owner is treated as providing current life insurance protection (including paid-up additions) to the non-owner. The amount of the current life insurance protection provided to the non-owner for a taxable year equals the excess of the average death benefit of the life insurance contract over the total amount payable to the owner under the split-dollar life insurance arrangement. The total amount payable to the owner is increased by the amount of any outstanding policy loan. The cost of the current life insurance protection provided to the non-owner in any year equals the amount of the current life insurance protection provided to the non-owner multiplied by the life insurance premium factor designated or permitted in guidance published in the Internal Revenue Bulletin. For example, assume that employer R is the owner of a $1,000,000 life insurance contract that is part of a split-dollar life insurance arrangement between R and employee E. Under the arrangement, R pays all of the $10,000 annual premiums and is entitled to receive the greater of its

premiums or the cash surrender value of the contract when the arrangement terminates or E dies. Assume that through year 10 of the arrangement R has paid $100,000 of premiums and that in year 10 the cost of term insurance for E is $1.00 for $1,000 of insurance and the cash surrender value of the contract is $200,000. Under § 1.61–22, in year 10, E must include in compensation income $800 ($1,000,000—$200,000, or $800,000 payable to R, multiplied by .001 (E's premium rate factor)). If, however, E paid $300 of the premium, E would include $500 in compensation income.

The Treasury Department and the IRS request comments on whether there is a need for more specific guidance in computing the cost of a death benefit that varies during the course of a taxable year. Comments are requested concerning, for example, whether a convention requiring the amount of the death benefit to be recomputed on a quarterly or semi-annual basis would properly balance the accurate computation of the death benefit against compliance and administrative burdens.

Equity Split-Dollar Life Insurance Arrangements

Under § 1.61–22(d)(3), the owner and the non-owner also must account fully and consistently for any right in, or benefit of, a life insurance contract provided to the non-owner under an equity split-dollar life insurance arrangement. For example, in a compensatory context in which the contract is owned by the employer, the employee must include in gross income the value of any interest in the cash surrender value of the contract provided to the employee during a taxable year.

This result is consistent with the conclusion in Rev. Rul. 66–110 that an employee must include in gross income the value of all economic benefits provided under a split-dollar life insurance arrangement. More broadly, this result is consistent with the fact that a non-owner who has an interest in the cash surrender value of a life insurance contract under an equity split-dollar life insurance arrangement is in a better economic position than a non-owner who has no such interest under a non-equity arrangement.

In general, a mere unfunded, unsecured promise to pay money in the future—as in a standard nonqualified deferred compensation plan covering an employee—does not result in current income. However, a non-owner's interest in a life insurance contract under an equity split-dollar life insurance arrangement is less like that of an employee covered under a standard nonqualified deferred compensation arrangement and more like that of an employee who obtains an interest in a specific asset of the employer (such as where the employer makes an outright purchase of a life insurance contract for the benefit of the employee). The employer's right to a return of its premiums, which characterizes most equity split-dollar life insurance arrangements, affects only the valuation of the employee's interest under the arrangement and, therefore, the amount of the employee's current income.

Specific guidance regarding valuation of economic benefits under an equity split-dollar life insurance arrangement is reserved in § 1.61–22, pending comments from interested parties concerning an appropriate valuation methodology and views on whether such a methodology should be adopted as a substantive rule or as a safe harbor. Any proposal for a specific methodology should be objective and administrable. One potential approach for valuation might involve subtracting from current premium payments made by the contract owner the net present value of the amount to be repaid to the owner in the future.

Other Tax Consequences

Because § 1.61–22(c) treats one party to the split-dollar life insurance arrangement as the owner of the entire contract, the non-owner has no investment in the contract under section 72(e). Thus, no amount paid by the non-owner under a split-dollar life insurance arrangement, whether or not designated as a premium, and no amount included in the non-owner's gross income as an economic benefit, is treated as investment in the contract under section 72(e)(6) for the non-owner. However, as described below, special rules apply in the case of a transfer of the contract from the owner to the non-owner.

Any premium paid by the owner is included in the owner's investment in the contract under section 72(e)(6). However, no premium payment and no economic benefit includible in the non-owner's gross income is deductible by the owner (except as otherwise provided under section 83 when the contract is transferred to the non-owner and the transfer is taxable in accordance with the rules of that section). Any amount paid by the non-owner to the owner for any economic benefit is included in the owner's gross income. Such amount is also included in the owner's investment in the contract (but only to the extent not otherwise so included by reason of having been paid by the owner as a premium or other consideration for the contract).

b. Taxation of Amounts Received Under the Life Insurance Contract

Any amount received under the life insurance contract (other than an amount received by reason of death) and provided, directly or indirectly, to the non-owner is treated as though paid by the insurance company to the owner and then by the owner to the non-owner. This rule applies to a policy owner dividend, the proceeds of a specified policy loan (as defined in § 1.61–22(e)), a withdrawal, or the proceeds of a partial surrender. The owner is taxed on the amount in accordance with the rules of section 72. The non-owner (and the owner for gift tax and employment tax purposes) must take the amount into account as a payment of compensation, a distribution under section 301, a gift, or other transfer depending on the non-owner's relationship to the owner. However, the amount that must be taken into account is reduced by the sum of (i) the value of all economic benefits actually taken into account by the non-owner (and the owner for gift tax and employment tax purposes) reduced (but not below zero) by the amounts that would have been taken into account were the arrangement a non-equity split-dollar life insurance arrangement and (ii) any consideration paid by the non-owner for all economic benefits reduced (but not below zero) by any consideration paid by the non-owner that would have been allocable to economic benefits provided to the non-owner were the arrangement a non-equity split-dollar life insurance arrangement. However, the preceding sentence applies only to the extent such economic benefits were not previously used to reduce an earlier amount received under the contract.

The same result applies in the case of a specified policy loan. A policy loan is a specified policy loan to the extent (i) the proceeds of the loan are distributed directly from the insurance company to the non-owner; (ii) a reasonable person would not expect that the loan will be repaid by the non-owner; or (iii) the non-owner's obligation to repay the loan to the owner is satisfied, or is capable of being satisfied, upon repayment by either party to the insurance company. Because the employee is not the owner of the contract, the specified policy loan will not be treated as a loan to the employee but as a loan to the employer (the owner of the contract), followed by a payment of cash compensation from the employer to the employee.

Amounts received by reason of death are treated differently. Under § 1.61–

22(f), any amount paid to a beneficiary (other than the owner) by reason of the death of the insured is excludable from the beneficiary's gross income under section 101(a) as an amount received under a life insurance contract. This result applies only to the extent that such amount is allocable to current life insurance protection provided to the non-owner pursuant to the split-dollar life insurance arrangement, the cost of which was paid by the non-owner, or the value of which the non-owner actually took into account under the rules set forth in § 1.61–22. Amounts received by a non-owner in its capacity as a lender are generally not amounts received by reason of the death of the insured under section 101(a). Cf. Rev. Rul. 70–254 (1970–1 C.B. 31).

c. Transfer of Life Insurance Contract to the Non-Owner

Section 1.61–22(g) provides rules for the transfer of a life insurance contract (or an undivided interest therein) from the owner to the non-owner. Consistent with the general rule for determining ownership, § 1.61–22(g) provides that a transfer of a life insurance contract (or an undivided interest therein) underlying a split-dollar life insurance arrangement occurs on the date that the non-owner becomes the owner of the entire contract (or the undivided interest therein). Thus, a transfer of the contract does not occur merely because the cash surrender value of the contract exceeds the premiums paid by the owner or the amount ultimately repayable to the owner on termination of the arrangement or the death of the insured. In addition, there is no transfer of the contract if the owner merely endorses a percentage of the cash surrender value of the contract (or similar rights in the contract) to the non-owner. Unless and until ownership of the contract is formally changed, the owner will continue to be treated as the owner for all Federal income, employment, and gift tax purposes.

At the time of a transfer, there generally must be taken into account for Federal income, employment, and gift tax purposes the excess of the fair market value of the life insurance contract (or the undivided interest therein) transferred to the non-owner (transferee) over the sum of (i) the amount the transferee pays to the owner (transferor) to obtain the contract (or the undivided interest therein), (ii) the value of all economic benefits actually taken into account by the non-owner (and the owner for gift tax and employment tax purposes) reduced (but not below zero) by the amounts that would have been taken into account were the arrangement a non-equity split-dollar life insurance arrangement, and (iii) any consideration paid by the non-owner for all economic benefits reduced (but not below zero) by any consideration paid by the non-owner that would have been allocable to economic benefits provided to the non-owner were the arrangement a non-equity split-dollar life insurance arrangement. However, clauses (ii) and (iii) of the preceding sentence apply only to the extent those economic benefits were not previously used to reduce an earlier amount received under the contract. For this purpose, the fair market value of the life insurance contract is the cash surrender value and the value of all other rights under the contract (including any supplemental agreements, whether or not guaranteed), other than the value of the current life insurance protection. For example, the fair market value of the contract includes the value of a guaranteed right to an above-market rate of return (to the extent not already reflected in the cash surrender value).

In a transfer subject to section 83, fair market value is determined disregarding any lapse restrictions. In addition, the timing of the transferee's inclusion is determined under the rules of section 83. Therefore, a transfer will not give rise to gross income until the transferee's rights to the contract (or undivided interest in the contract) are substantially vested (unless the transferee makes a section 83(b) election). Section 1.83–6(a)(5) of the proposed regulations allows the service recipient's deduction at that time.

Under the general rule, the amount treated as consideration paid to acquire the contract under section 72(g)(1) equals the greater of the fair market value of the contract or the sum of the amount the transferee pays to obtain the contract plus the amount of unrecovered economic benefits previously taken into account or paid for by the transferee. Thus, these amounts become the transferee's investment in the contract under section 72(e) immediately after the transfer.

In the case of a transfer between a donor and a donee, the amount treated as consideration paid by the transferee to acquire the contract under section 72(g)(1) to determine the transferee's investment in the contract under section 72(e) immediately after the transfer is the sum of (i) the amount the transferee pays to obtain the contract, (ii) the aggregate of premiums or other consideration paid or deemed to have been paid by the transferor, and (iii) the amount of unrecovered economic benefits previously either taken into account by the transferee (excluding the amount of those benefits that was excludable from the transferee's gross income at the time of receipt) or paid for by the transferee.

After a transfer of an entire life insurance contract, the transferee becomes the owner for Federal income, employment, and gift tax purposes, including for purposes of the split-dollar life insurance rules. Thus, if the transferor pays premiums after the transfer, the payment of those premiums may be includible in the transferee's gross income if the payments are not split-dollar loans under § 1.7872–15. After the transfer of an undivided interest in a life insurance contract, the transferee is treated as the new owner of a separate contract for all purposes. However, if a transfer of a life insurance contract or an undivided interest in the contract is made in connection with the performance of services and the transfer is not yet taxable under section 83 (because rights to the contract or the undivided interest are substantially nonvested and no section 83(b) election is made), the transferor continues to be treated as the owner of the contract.

4. Taxation Under the Loan Regime

a. In General

Under § 1.7872–15, a payment made pursuant to a split-dollar life insurance arrangement is a split-dollar loan and the owner and non-owner are treated, respectively, as borrower and lender if (i) the payment is made either directly or indirectly by the non-owner to the owner; (ii) the payment is a loan under general principles of Federal tax law or, if not a loan under general principles of Federal tax law, a reasonable person would expect the payment to be repaid in full to the non-owner (whether with or without interest); and (iii) the repayment is to be made from, or is secured by, either the policy's death benefit proceeds or its cash surrender value. The Treasury Department and the IRS recognize that, in the earlier years during which a split-dollar life insurance arrangement is in effect, policy surrender and load charges may significantly reduce the policy's cash surrender value, resulting in under-collateralization of a non-owner's right to be repaid its premium payments. Nevertheless, so long as a reasonable person would expect the payment to be repaid in full, the payment is a split-dollar loan under § 1.7872–15. The Treasury Department and the IRS believe that Congress generally intended that section 7872 would govern the treatment of an arrangement the substance of which is a loan from one

party to another and that there was no congressional intent to make section 7872 inapplicable to split-dollar life insurance arrangements if the arrangements are, in substance, loans.

If a payment on a split-dollar loan is nonrecourse to the borrower and the loan does not otherwise provide for contingent payments, § 1.7872–15 treats the loan as a split-dollar loan that provides for contingent payments unless the parties to the split-dollar life insurance arrangement provide a written representation with respect to the loan to which the payment relates. In general, unless the parties represent that a reasonable person would expect that all payments under the loan will be made, the loan will be treated as a loan that provides for contingent payments. This written representation requirement is intended to help ensure that the parties to the arrangement treat the payments consistently.

If a split-dollar loan does not provide for sufficient interest, the loan is a below-market split-dollar loan subject to section 7872 and § 1.7872–15. If the split-dollar loan provides for sufficient interest, then, except as provided in § 1.7872–15, the loan is subject to the general rules for debt instruments (including the rules for OID). In general, interest on a split-dollar loan is not deductible by the borrower under sections 264 and 163(h). Section 1.7872–15 provides special rules for split-dollar loans that provide for certain variable rates of interest, contingent interest payments, and lender or borrower options. Section 1.7872–15 also provides rules for split-dollar loans on which stated interest is subsequently waived, cancelled, or forgiven by the lender, and for below-market split-dollar loans with indirect participants.

b. Treatment of Below-Market Split-Dollar Loans

If a split-dollar loan is a below-market loan, then, in general, the loan is recharacterized as a loan with interest at the AFR, coupled with an imputed transfer by the lender to the borrower. The timing, amount, and characterization of the imputed transfers between the lender and borrower of the loan will depend upon the relationship between the lender and the borrower (for example, the imputed transfer is generally characterized as a compensation payment if the lender is the borrower's employer), and whether the loan is a demand loan or a term loan.

For purposes of § 1.7872–15, a below-market split-dollar loan made from a lender to a borrower with a relationship not enumerated in section 7872(c)(1)(A), (B), or (C) is treated as a significant-effect loan under section 7872(c)(1)(E). However, if the effect of a split-dollar loan is attributable to the relationship between the lender or borrower and an indirect participant (for example, when a split-dollar loan is made from an employer to the child of an employee), the below-market split-dollar loan is restructured as two or more successive below-market loans. Any deduction allowable to the indirect participant under section 163(d) for investment interest deemed paid is limited to the amount of investment interest deemed received by the indirect participant.

Split-Dollar Demand Loans

A split-dollar demand loan is any split-dollar loan that is payable in full at any time on the demand of the lender (or within a reasonable time after the lender's demand). Each calendar year that a split-dollar demand loan is outstanding, the loan is tested to determine if the loan provides for sufficient interest. A split-dollar demand loan provides for sufficient interest for the calendar year if the rate (based on annual compounding) at which interest accrues on the loan's adjusted issue price during the year is no lower than the blended annual rate for the year. The use of an annual rate, rather than a semiannual rate, provides a simplified method to determine whether a split-dollar loan provides for sufficient interest and, if the split-dollar loan is below-market, to compute the loan's forgone interest.

In the case of a below-market split-dollar demand loan, the amount of forgone interest for a calendar year is the excess of (i) the amount of interest that would have been payable on the loan for the calendar year if interest accrued on the loan's adjusted issue price at the appropriate AFR and were payable annually over (ii) any interest that accrues on the loan during the year. In general, this excess amount is treated as transferred by the lender to the borrower and retransferred as interest by the borrower to the lender at the end of each calendar year that the loan remains outstanding.

Split-Dollar Term Loans

A split-dollar term loan is any loan that is not a split-dollar demand loan. A split-dollar term loan does not provide for sufficient interest if the amount loaned exceeds the imputed loan amount, which is the present value of all payments due under the loan, determined as of the date the loan is made, using a discount rate equal to the AFR in effect on that date. The AFR used for purposes of the preceding sentence must be appropriate for the loan's term (short-term, mid-term, or long-term) and the compounding period used in computing the present value.

With respect to a below-market split-dollar term loan, the amount of the imputed transfer by the lender to the borrower is the excess of the amount loaned over the imputed loan amount. In general, a split-dollar term loan is treated as having OID equal to the amount of the imputed transfer, in addition to any other OID on the loan (determined without regard to § 1.7872–15).

The term of a split-dollar term loan generally is the term stated in the split-dollar life insurance arrangement. However, special rules apply if the loan is subject to certain borrower or lender options. For purposes of determining a loan's term, the borrower or the lender is projected to exercise or not exercise an option or combination of options in a manner that minimizes the loan's overall yield.

Special rules also are provided for split-dollar term loans payable upon the death of an individual, certain split-dollar term loans that are conditioned on the future performance of substantial services by an individual, and gift split-dollar term loans. Under § 1.7872–15, these split-dollar loans are split-dollar term loans for purposes of determining whether the loan provides for sufficient interest. However, if the loan does not provide for sufficient interest when the loan is made, forgone interest is determined on the loan annually similar to a split-dollar demand loan. The rate used to determine the amount of forgone interest each year is the AFR based on the term of the loan rather than the blended annual rate. A below-market gift split-dollar term loan is treated as a term loan for gift tax purposes.

c. Loans That Provide for Contingent Payments

A split-dollar loan that provides for one or more contingent payments is accounted for by the parties under the contingent split-dollar method, a method similar to the noncontingent bond method described in § 1.1275–4(b). Under this method, the lender prepares a projected payment schedule that includes all of the noncontingent payments and a projected payment for each contingent payment. Any contingent payment provided for under the terms of a split-dollar loan is projected to resolve to its lowest possible value. However, the projected payment schedule must produce a yield that is not less than zero. The projected payment schedule is used to determine

the yield of the split-dollar loan. This yield is then used to determine the accruals of interest (OID) on the loan and to determine whether the loan is a below-market loan for purposes of section 7872 and § 1.7872–15. For example, a split-dollar loan providing for contingent payments is treated as a below-market split-dollar loan if the yield based on the projected payment schedule is less than the appropriate AFR.

If, when a contingency resolves, the actual amount of a contingent payment is different than the projected payment, appropriate adjustments are made by the parties to reflect the difference when the contingency resolves. For example, if a contingent split-dollar loan was treated as a below-market split-dollar loan based on the projected payment schedule and the actual yield on the loan turns out to be greater than the appropriate AFR when the contingency resolves, the parties will take appropriate adjustments into account for any prior imputed transfers under section 7872 and § 1.7872–15 at that time.

d. Split-Dollar Loans With Stated Interest That Is Subsequently Waived, Cancelled or Forgiven

If a split-dollar loan provides for stated interest that is subsequently waived, cancelled or forgiven, appropriate adjustments are made by the parties to reflect the difference between the interest payable at the stated rate and the interest actually paid by the borrower at that time. An adjustment (for example, an imputed transfer of compensation) may have consequences for the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA) if the adjustment represents wages to the borrower.

e. Payment Ordering Rules

Payments made by a borrower to a lender pursuant to a split-dollar life insurance arrangement are applied in the following order: to accrued but unpaid interest (including any OID) on all outstanding split-dollar loans in the order the interest accrued; to principal on the outstanding split-dollar loans in the order in which the loans were made; to payments of amounts previously paid by the lender pursuant to the split-dollar life insurance arrangement that were not reasonably expected to be repaid; and to any other payment with respect to a split-dollar life insurance arrangement. Comments are requested on this rule and other alternative rules, which include applying payments to both the accrued but unpaid interest and principal on each split-dollar loan in the order in which the loans were made, and applying payments pro-rata on all existing split-dollar loan balances.

5. Transfer Tax Treatment of Split-Dollar Life Insurance Arrangements

The proposed regulations will apply for gift tax purposes in situations involving private split-dollar life insurance arrangements. Thus, if, under the proposed regulations, an irrevocable insurance trust is the owner of the life insurance contract underlying the split-dollar life insurance arrangement, and a reasonable person would expect that the donor, or the donor's estate, will recover an amount equal to the donor's premium payments, those premium payments are treated as loans made by the donor to the trust and are subject to § 1.7872–15. In such a case, payment of a premium by the donor is treated as a split-dollar loan to the trust in the amount of the premium payment. If the loan is repayable upon the death of the donor, the term of the loan is the donor's life expectancy determined under the appropriate table under § 1.72–9 as of the date of the payment and the value of the gift is the amount of the premium payment less the present value (determined under section 7872 and § 1.7872–15) of the donor's right to receive repayment. If, however, the donor makes premium payments that are not split-dollar loans, then the premium payments are governed by general gift tax principles. In such a case, with each premium payment, the donor is treated as making a gift to the trust equal to the amount of that payment.

Different rules apply, however, if the donor is treated under § 1.61–22(c) as the owner of the life insurance contract underlying the split-dollar life insurance arrangement and the donor is entitled to recover (either conditionally or unconditionally) all or any portion of the premium payments and such recovery is to be made from, or is secured by, the proceeds of the life insurance contract. Under these circumstances, the donor is treated as making a gift of economic benefits to the irrevocable insurance trust when the donor makes any premium payment on the life insurance contract. For example, assume that under the terms of the split-dollar life insurance arrangement, on termination of the arrangement or the donor's death, the donor or donor's estate is entitled to receive an amount equal to the *greater* of the aggregate premiums paid by the donor or the cash surrender value of the contract. In this case, each time the donor pays a premium, the donor makes a gift to the trust equal to the cost of the current life insurance protection provided to the trust less any premium amount paid by the trustee. On the other hand, if the donor or the donor's estate is entitled to receive an amount equal to the *lesser* of the aggregate premiums paid by the donor, or the cash surrender value of the contract, the amount of the donor's gift to the trust upon the payment of a premium equals the value of the economic benefits attributable to the trust's entire interest in the contract (reduced by any consideration the trustee paid for the interest).

As discussed earlier, § 1.61–22(c) treats the donor as the owner of a life insurance contract even if the donee is named as the policy owner if, under the split-dollar life insurance arrangement, the only amount that would be treated as a transfer by gift by the donor under the arrangement would be the value of current life insurance protection. However, any amount paid by a donee, directly or indirectly, to the donor for such current life insurance protection would generally be included in the donor's gross income.

Similarly, if the donor is the owner of the life insurance contract that is part of the split-dollar life insurance arrangement, amounts received by the irrevocable insurance trust (either directly or indirectly) under the contract (for example, as a policy owner dividend or proceeds of a specified policy loan) are treated as gifts by the donor to the irrevocable insurance trust as provided in § 1.61–22(e). The donor must also treat as a gift to the trust the amount set forth in § 1.61–22(g) upon the transfer of the life insurance contract (or undivided interest therein) from the donor to the trust.

The gift tax consequences of the transfer of an interest in a life insurance contract to a third party will continue to be determined under established gift tax principles notwithstanding who is treated as the owner of the life insurance contract under the proposed regulations. See, for example, Rev. Rul. 81–198 (1981–2 C.B. 188). Similarly, for estate tax purposes, regardless of who is treated as the owner of a life insurance contract under these proposed regulations, the inclusion of the policy proceeds in a decedent's gross estate will continue to be determined under section 2042. Thus, the policy proceeds will be included in the decedent's gross estate under section 2042(1) if receivable by the decedent's executor, or under section 2042(2) if the policy proceeds are receivable by a beneficiary other than the decedent's estate and the decedent possessed any incidents of ownership with respect to the policy.

6. Other Applications of These Regulations

The proposed regulations provide for conforming changes to the definition of wages under sections 3121(a), 3231(e), 3306(b), and 3401(a) and self-employment income under section 1402(a). The rules also apply for purposes of characterizing distributions from a corporation to a shareholder under section 301.

7. Revenue Rulings To Become Obsolete

Concurrent with the publication of final regulations relating to split-dollar life insurance arrangements in the **Federal Register**, the IRS will obsolete the following revenue rulings with respect to split-dollar life insurance arrangements entered into *after* the date the final regulations are published in the **Federal Register:** Rev. Rul. 64–328 (1964–2 C.B. 11); Rev. Rul. 66–110 (1966–1 C.B. 12); Rev. Rul. 78–420 (1978–2 C.B. 68) (with respect to income tax consequences); Rev. Rul. 79–50 (1979–1 C.B. 138); and Rev. Rul. 81–198 (1981–2 C.B. 188) (with respect to income tax consequences). Taxpayers entering into split-dollar life insurance arrangements on or before the date of publication of the final regulations may continue to rely on these revenue rulings to the extent described in Notice 2002–8.

The Treasury Department and the IRS request comments concerning whether any other revenue rulings or guidance published in the Internal Revenue Bulletin should be reconsidered in connection with the publication of final regulations relating to split-dollar life insurance arrangements in the **Federal Register**.

Proposed Effective Date

These proposed regulations are proposed to apply to any split-dollar life insurance arrangement entered into after the date these regulations are published as final regulations in the **Federal Register**. In addition, under the proposed regulations, an arrangement entered into on or before the date final regulations are published in the **Federal Register** and that is materially modified after that date is treated as a new arrangement entered into on the date of the modification. Comments are requested regarding whether certain material modifications should be disregarded in determining whether an arrangement is treated as a new arrangement for purposes of the effective date rule. For example, comments are requested whether an arrangement entered into on or before the effective date should be subject to these rules if the only material modification to the arrangement after that date is an exchange of an insurance policy qualifying for nonrecognition treatment under section 1035.

Taxpayers are reminded that Notice 2002–8 provides guidance with respect to arrangements entered into before the effective date of these regulations.

In addition, taxpayers may rely on these proposed regulations for the treatment of any split-dollar life insurance arrangement entered into on or before the date final regulations are published in the **Federal Register** provided that all parties to the split-dollar life insurance arrangement treat the arrangement consistently. Thus, for example, an owner and a non-owner of a life insurance contract that is part of a split-dollar life insurance arrangement may not rely on these proposed regulations if one party treats the arrangement as subject to the economic benefit rules of § 1.61–22 and the other party treats the arrangement as subject to the loan rules of § 1.7872–15. Moreover, parties to an equity split-dollar life insurance arrangement subject to the economic benefit regime may rely on these proposed regulations only if the value of all economic benefits taken into account by the parties exceeds the value of the economic benefits the parties would have taken into account if the arrangement were a non-equity split-dollar life insurance arrangement (determined using the Table 2001 rates in Notice 2002–8), thereby reflecting the fact that such an arrangement provides the non-owner with economic benefits that are more valuable than current life insurance protection.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory flexibility assessment is not required. It is hereby certified that the collection of information requirements in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations merely require a taxpayer to prepare a written representation that contains minimal information (if the loan provides for nonrecourse payments) or a projected payment schedule (if the loan provides for contingent payments). In addition, the preparation of these documents should take no more than .28 hours per taxpayer. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The Treasury Department and IRS specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 23, 2002, beginning at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 9, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are Rebecca Asta of the Office of Associate Chief Counsel (Financial Institutions and Products), Lane Damazo of the Office of Associate Chief Counsel (Passthroughs and Special Industries), Elizabeth Kaye of the Office of Associate Chief Counsel (Income Tax and Accounting), Erinn Madden of the Office of Associate Chief Counsel (Tax-Exempt and Governmental Entities), and Krishna Vallabhaneni of the Office of Associate Chief Counsel

(Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.7872–15 also issued under 26 U.S.C. 1275 and 7872. * * *

Par. 2. Section 1.61–2 is amended by:

1. Redesignating paragraphs (d)(2)(ii)(*a*) and (*b*) as paragraphs (d)(2)(ii)(A) and (B), respectively.

2. Adding two sentences immediately following the second sentence in newly designated paragraph (d)(2)(ii)(A).

The additions read as follows:

§ 1.61–2 Compensation for services, including fees, commissions, and similar items.

* * * * *

(d) * * *

(2) * * *

(ii)(A) *Cost of life insurance on the life of the employee.* * * * For example, if an employee or independent contractor is the owner (as defined in § 1.61–22(c)(1)) of a life insurance contract and the payments under such contract are not split-dollar loans under § 1.7872–15(b)(1), the employee or independent contractor must include in income the amount of any such payments by the employer or service recipient with respect to such contract during any year to the extent that the employee's or independent contractor's rights to the life insurance contract are substantially vested (within the meaning of § 1.83–3(b)). This result is the same regardless of whether the employee or independent contractor had at all times been the owner of the life insurance contract or the contract previously had been owned by the employer or service recipient as part of a split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)) and had been transferred by the employer or service recipient to the employee or independent contractor under § 1.61–22(g). * * *

* * * * *

Par. 3. Section 1.61–22 is added to read as follows:

§ 1.61–22 Taxation of split-dollar life insurance arrangements.

(a) *Scope*—(1) *In general.* This section provides rules for the taxation of a split-dollar life insurance arrangement for purposes of the income tax, the gift tax, the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), the Railroad Retirement Tax Act (RRTA), and the Self-Employment Contributions Act of 1954 (SECA). For the Collection of Income Tax at Source on Wages, this section also provides rules for the taxation of a split-dollar life insurance arrangement, other than a payment under a split-dollar life insurance arrangement that is a split-dollar loan under § 1.7872–15(b)(1). In general, a split-dollar life insurance arrangement (as defined in paragraph (b) of this section) is subject to the rules of either paragraphs (d) through (g) of this section or § 1.7872–15. For rules to determine which rules apply to a split-dollar life insurance arrangement, see paragraph (b)(3) of this section.

(2) *Overview.* Paragraph (b) of this section defines a split-dollar life insurance arrangement and provides rules to determine whether an arrangement is subject to the rules of paragraphs (d) through (g) of this section, § 1.7872–15, or general tax rules. Paragraph (c) of this section defines certain other terms. Paragraph (d) of this section sets forth rules for the taxation of economic benefits provided under a split-dollar life insurance arrangement. Paragraph (e) of this section sets forth rules for the taxation of amounts received under a life insurance contract that is part of a split-dollar life insurance arrangement. Paragraph (f) of this section provides rules for additional tax consequences of a split-dollar life insurance arrangement, including the treatment of death benefits. Paragraph (g) of this section provides rules for the transfer of a life insurance contract (or an undivided interest in the contract) that is part of a split-dollar life insurance arrangement. Paragraph (h) of this section provides examples illustrating the application of this section. Paragraph (j) of this section provides the effective date of this section.

(b) *Split-dollar life insurance arrangement*— (1) *In general.* A split-dollar life insurance arrangement is any arrangement between an owner and a non-owner of a life insurance contract that satisfies the following criteria—

(i) Either party to the arrangement pays, directly or indirectly, all or any portion of the premiums on the life insurance contract, including a payment by means of a loan to the other party that is secured by the life insurance contract;

(ii) At least one of the parties to the arrangement paying premiums under paragraph (b)(1)(i) of this section is entitled to recover (either conditionally or unconditionally) all or any portion of those premiums and such recovery is to be made from, or is secured by, the proceeds of the life insurance contract; and

(iii) The arrangement is not part of a group-term life insurance plan described in section 79.

(2) *Special rule*—(i) *In general.* Any arrangement between an owner and a non-owner of a life insurance contract is treated as a split-dollar life insurance arrangement (regardless of whether the criteria of paragraph (b)(1) of this section are satisfied) if the arrangement is described in paragraph (b)(2)(ii) or (iii) of this section.

(ii) *Compensatory arrangements.* An arrangement is described in this paragraph (b)(2)(ii) if the following criteria are satisfied—

(A) The arrangement is entered into in connection with the performance of services and is not part of a group-term life insurance plan described in section 79;

(B) The employer or service recipient pays, directly or indirectly, all or any portion of the premiums; and

(C) The beneficiary of all or any portion of the death benefit is designated by the employee or service provider or is any person whom the employee or service provider would reasonably be expected to designate as the beneficiary.

(iii) *Shareholder arrangements.* An arrangement is described in this paragraph (b)(2)(iii) if the following criteria are satisfied—

(A) The arrangement is entered into between a corporation and another person in that person's capacity as a shareholder in the corporation;

(B) The corporation pays, directly or indirectly, all or any portion of the premiums; and

(C) The beneficiary of all or any portion of the death benefit is designated by the shareholder or is any person whom the shareholder would reasonably be expected to designate as the beneficiary.

(3) *Determination of whether this section or § 1.7872–15 applies to a split-*

dollar life insurance arrangement—(i) *Split-dollar life insurance arrangements involving split-dollar loans under § 1.7872–15.* Except as provided in paragraph (b)(3)(ii) of this section, paragraphs (d) through (g) of this section do not apply to any split-dollar loan as defined in § 1.7872–15(b)(1). Section 1.7872–15 applies to any such loan. See paragraph (b)(5) of this section for the treatment of payments made by a non-owner under a split-dollar life insurance arrangement that are not split-dollar loans.

(ii) *Exceptions.* Paragraphs (d) through (g) of this section apply (and § 1.7872–15 does not apply) to any split-dollar life insurance arrangement if—

(A) The arrangement is entered into in connection with the performance of services, and the employee or service provider is not the owner of the life insurance contract (or is not treated as the owner of the contract under paragraph (c)(1)(ii)(A)(*1*) of this section); or

(B) The arrangement is entered into between a donor and a donee (for example, a life insurance trust) and the donee is not the owner of the life insurance contract (or is not treated as the owner of the contract under paragraph (c)(1)(ii)(A)(*2*) of this section).

(4) *Consistency requirement.* Both the owner and the non-owner of a life insurance contract that is part of a split-dollar life insurance arrangement described in paragraph (b)(1) or (2) of this section must fully and consistently account for all amounts under the arrangement under paragraph (b)(5) of this section, paragraphs (d) through (g) of this section, or under § 1.7872–15.

(5) *Non-owner payments that are not split-dollar loans.* If a non-owner of a life insurance contract makes premium payments (directly or indirectly) under a split-dollar life insurance arrangement, and the payments are neither split-dollar loans nor consideration for economic benefits described in paragraph (d) of this section, then neither the rules of paragraphs (d) through (g) of this section nor the rules in § 1.7872–15 apply to such payments. Instead, general income tax, employment tax, and gift tax principles apply to the premium payments. See, for example, § 1.61–2(d)(2)(ii)(A).

(6) *Waiver, cancellation, or forgiveness.* If a repayment obligation described in § 1.7872–15(a)(2) is waived, cancelled, or forgiven at any time, then the parties must take the amount waived, cancelled, or forgiven into account in accordance with the relationships between the parties (for example, as compensation in the case of an employee-employer relationship).

(c) *Definitions.* The following definitions apply for purposes of this section:

(1) *Owner*—(i) *In general.* With respect to a life insurance contract, the person named as the policy owner of such contract generally is the owner of such contract. If two or more persons are named as policy owners of a life insurance contract and each person has all the incidents of ownership with respect to an undivided interest in the contract, each person is treated as the owner of a separate contract to the extent of such person's undivided interest. If two or more persons are named as policy owners of a life insurance contract but each person does not have all the incidents of ownership with respect to an undivided interest in the contract, the person who is the first-named policy owner is treated as the owner of the entire contract.

(ii) *Special rule for certain arrangements*—(A) *In general.* Notwithstanding paragraph (c)(1)(i) of this section—

(*1*) An employer or service recipient is treated as the owner of a life insurance contract under a split-dollar life insurance arrangement that is entered into in connection with the performance of services if, at all times, the arrangement is described in paragraph (d)(2) of this section; and

(*2*) A donor is treated as the owner of a life insurance contract under a split-dollar life insurance arrangement that is entered into between a donor and a donee (for example, a life insurance trust) if, at all times, the arrangement is described in paragraph (d)(2) of this section.

(B) *Modifications.* [Reserved]

(iii) *Attribution rules.* [Reserved]

(2) *Non-owner.* With respect to a life insurance contract, a non-owner is any person (other than the owner of such contract) that has any direct or indirect interest in such contract (but not including a life insurance company acting only in its capacity as the issuer of a life insurance contract).

(3) *Transfer of entire contract or undivided interest therein.* A transfer of the ownership of a life insurance contract (or an undivided interest in such contract) that is part of a split-dollar life insurance arrangement occurs on the date that a non-owner becomes the owner (within the meaning of paragraph (c)(1) of this section) of the entire contract or of an undivided interest in the contract.

(4) *Undivided interest.* An undivided interest in a life insurance contract consists of an identical fractional or percentage interest in each right and benefit under the contract.

(5) *Employment tax.* The term employment tax means the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), the Railroad Retirement Tax Act (RRTA), the Self-Employment Contributions Act of 1954 (SECA), and the Collection of Income Tax at Source on Wages.

(d) *Economic benefits provided under a split-dollar life insurance arrangement*—(1) *In general.* Under a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section, the owner of the life insurance contract is treated as providing economic benefits to the non-owner of the life insurance contract. Those economic benefits must be accounted for fully and consistently by both the owner and the non-owner pursuant to the rules of this paragraph (d). The value of the economic benefits, reduced by any consideration paid by the non-owner to the owner, is treated as transferred from the owner to the non-owner. Depending on the relationship between the owner and the non-owner, the economic benefits may constitute a payment of compensation, a distribution under section 301, a gift, or a transfer having a different tax character. Further, depending on the relationship between or among a non-owner and one or more other persons, the economic benefits may be treated as provided from the owner to the non-owner and as separately provided from the non-owner to such other person or persons (for example, as a payment of compensation from an employer to an employee and as a gift from the employee to the employee's children).

(2) *Non-equity split-dollar life insurance arrangements.* In the case of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section under which the only economic benefit provided to the non-owner is current life insurance protection (including paid-up additions thereto), the amount of the current life insurance protection provided to the non-owner for a taxable year equals the excess of the average death benefit of the life insurance contract over the total amount payable to the owner under the split-dollar life insurance arrangement. The total amount payable to the owner is increased by the amount of any outstanding policy loan. The cost of the current life insurance protection provided to the non-owner in any year equals the amount of the current life insurance protection provided to the non-owner multiplied by the life insurance premium factor designated or

permitted in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter).

(3) *Equity split-dollar life insurance arrangements*—(i) *In general.* In the case of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section other than an arrangement described in paragraph (d)(2) of this section, any right in, or benefit of, a life insurance contract (including, but not limited to, an interest in the cash surrender value) provided during a taxable year to a non-owner under a split-dollar life insurance arrangement is an economic benefit for purposes of this paragraph (d).

(ii) *Valuation of economic benefits.* [Reserved]

(e) *Amounts received under the contract*—(1) *In general.* Except as otherwise provided in paragraph (f)(2)(ii) of this section, any amount received under a life insurance contract that is part of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section (including, but not limited to, a policy owner dividend, proceeds of a specified policy loan described in paragraph (e)(2) of this section, or the proceeds of a withdrawal from or partial surrender of the life insurance contract) is treated, to the extent provided directly or indirectly to a non-owner of the life insurance contract, as though such amount had been paid to the owner of the life insurance contract and then paid by the owner to the non-owner who is a party to the split-dollar life insurance arrangement. The amount received is taxable to the owner in accordance with the rules of section 72. The non-owner (and the owner for gift tax and employment tax purposes) must take the amount described in paragraph (e)(3) of this section into account as a payment of compensation, a distribution under section 301, a gift, or other transfer depending on the relationship between the owner and the non-owner.

(2) *Specified policy loan.* A policy loan is a specified policy loan to the extent—

(i) The proceeds of the loan are distributed directly from the insurance company to the non-owner;

(ii) A reasonable person would not expect that the loan will be repaid by the non-owner; or

(iii) The non-owner's obligation to repay the loan to the owner is satisfied or is capable of being satisfied upon repayment by either party to the insurance company.

(3) *Amount required to be taken into account.* With respect to a non-owner (and the owner for gift tax and employment tax purposes), the amount described in this paragraph (e)(3) is equal to the excess of—

(i) The amount treated as received by the owner under paragraph (e)(1) of this section; over

(ii) The amount of all economic benefits described in paragraph (d)(3) of this section actually taken into account under paragraph (d)(1) of this section by the transferee (and the transferor for gift tax and employment tax purposes) reduced (but not below zero) by any amounts that would have been taken into account under paragraph (d)(1) of this section if paragraph (d)(2) of this section were applicable to the arrangement plus any consideration paid by the non-owner for all economic benefits described in paragraph (d)(3) of this section reduced (but not below zero) by any consideration paid by the non-owner that would have been allocable to amounts described in paragraph (d)(2) of this section if paragraph (d)(2) of this section were applicable to the arrangement. The amount determined under the preceding sentence applies only to the extent that neither this paragraph (e)(3)(ii) nor paragraph (g)(1)(ii) of this section previously has applied to such economic benefits.

(f) *Other tax consequences*—(1) *Introduction.* In the case of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section, this paragraph (f) sets forth other tax consequences to the owner and non-owner of a life insurance contract that is part of the arrangement for the period prior to the transfer (as defined in paragraph (c)(3) of this section) of the contract (or an undivided interest therein) from the owner to the non-owner. See paragraph (g) of this section and § 1.83–6(a)(5) for tax consequences upon the transfer of the contract (or an undivided interest therein).

(2) *To non-owner*—(i) *In general.* A non-owner does not receive any investment in the contract under section 72(e)(6) with respect to a life insurance contract that is part of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section.

(ii) *Death proceeds to beneficiary (other than the owner*). Any amount paid to a beneficiary (other than the owner) by reason of the death of the insured is excluded from gross income by such beneficiary under section 101(a) as an amount received under a life insurance contract to the extent such amount is allocable to current life insurance protection provided to the non-owner pursuant to the split-dollar life insurance arrangement, the cost of which was paid by the non-owner, or the value of which the non-owner actually took into account pursuant to paragraph (d) of this section.

(3) *To owner.* Any premium paid by an owner under a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section is included in the owner's investment in the contract under section 72(e)(6). No premium or amount described in paragraph (d) of this section is deductible by the owner (except as otherwise provided in § 1.83–6(a)(5)). Any amount paid by a non-owner, directly or indirectly, to the owner of the life insurance contract for current life insurance protection or for any other economic benefit under the life insurance contract is included in the owner's gross income and is included in the owner's investment in the life insurance contract for purposes of section 72(e)(6) (but only to the extent not otherwise so included by reason of having been paid by the owner as a premium or other consideration for the contract).

(g) *Transfer of entire contract or undivided interest therein*—(1) *In general.* Upon a transfer within the meaning of paragraph (c)(3) of this section of a life insurance contract (or an undivided interest therein) to a non-owner (transferee), the transferee (and the owner (transferor) for gift tax and employment tax purposes) takes into account the excess of the fair market value of the life insurance contract (or the undivided interest therein) transferred to the transferee at that time over the sum of—

(i) The amount the transferee pays to the transferor to obtain the contract (or the undivided interest therein); and

(ii) The amount of all economic benefits described in paragraph (d)(3) of this section actually taken into account under paragraph (d)(1) of this section by the transferee (and the transferor for gift tax and employment tax purposes) reduced (but not below zero) by any amounts that would have been taken into account under paragraph (d)(1) of this section if paragraph (d)(2) of this section were applicable to the arrangement plus any consideration paid by the non-owner for all economic benefits described in paragraph (d)(3) of this section reduced (but not below zero) by any consideration paid by the non-owner that would have been allocable to amounts described in paragraph (d)(2) of this section if paragraph (d)(2) of this section were applicable to the arrangement. The amount determined under the preceding sentence applies only to the extent that neither paragraph (e)(3)(ii) of this

section nor this paragraph (g)(1)(ii) previously has applied to such economic benefits.

(2) *Determination of fair market value.* For purposes of paragraph (g)(1) of this section, the fair market value of a life insurance contract is the cash surrender value and the value of all other rights under such contract (including any supplemental agreements thereto and whether or not guaranteed), other than the value of current life insurance protection.

(3) *Exception for certain transfers in connection with the performance of services.* To the extent the ownership of a life insurance contract (or undivided interest in such contract) is transferred in connection with the performance of services, paragraph (g)(1) of this section does not apply until such contract (or undivided interest in such contract) is taxable under section 83. For purposes of paragraph (g)(1) of this section, fair market value is determined disregarding any lapse restrictions and at the time the transfer of such contract (or undivided interest in such contract) is taxable under section 83.

(4) *Treatment of non-owner after transfer*—(i) *In general.* After a transfer of an entire life insurance contract (except when such transfer is in connection with the performance of services and the transfer is not yet taxable under section 83), the person who previously had been the non-owner is treated as the owner of such contract for all purposes, including for purposes of paragraph (b) of this section and for purposes of § 1.61–2(d)(2)(ii)(A). After the transfer of an undivided interest in a life insurance contract (or, if later, at the time such transfer is taxable under section 83), the person who previously had been the non-owner is treated as the owner of a separate contract consisting of that interest for all purposes, including for purposes of paragraph (b) of this section and for purposes of § 1.61–2(d)(2)(ii)(A). However, such person will continue to be treated as a non-owner with respect to any undivided interest in the contract not so transferred (or not yet taxable under section 83).

(ii) *Investment in the contract after transfer*—(A) *In general.* The amount treated as consideration paid to acquire the contract under section 72(g)(1) to determine the aggregate premiums paid by the transferee for purposes of determining the transferee's investment in the contract under section 72(e) after the transfer (or, if later, at the time such transfer is taxable under section 83) equals the greater of the fair market value of the contract or the sum of the amounts determined under paragraphs (g)(1)(i) and (ii) of this section.

(B) *Transfers between a donor and a donee.* In the case of a transfer of a contract between a donor and a donee, the amount treated as consideration paid by the transferee to acquire the contract under section 72(g)(1) to determine the aggregate premiums paid by the transferee for purposes of determining the transferee's investment in the contract under section 72(e) after the transfer equals the sum of the amounts determined under paragraphs (g)(1)(i) and (ii) of this section except that—

(*1*) The amount determined under paragraph (g)(1)(i) of this section includes the aggregate of premiums or other consideration paid or deemed to have been paid by the transferor; and

(*2*) The amount of all economic benefits determined under paragraph (g)(1)(ii) of this section actually taken into account by the transferee does not include such benefits to the extent such benefits were excludable from the transferee's gross income at the time of receipt.

(C) *Transfers of an undivided interest in a contract.* If a portion of a contract is transferred to the transferee, then the amount to be included as consideration paid to acquire the contract is determined by multiplying the amount determined under paragraph (g)(4)(ii)(A) of this section (as modified by paragraph (g)(4)(ii)(B) of this section, if the transfer is between a donor and a donee) by a fraction, the numerator of which is the fair market value of the portion transferred and the denominator of which is the fair market value of the entire contract.

(D) *Example.* The following example illustrates the rules of this paragraph (g)(4)(ii):

Example. (i) In year 1, donor D and donee E enter into a split-dollar life insurance arrangement as defined in paragraph (b)(1) of this section. D is the owner of the life insurance contract under paragraph (c)(1) of this section. The life insurance contract is not a modified endowment contract as defined in section 7702A. In year 5, D gratuitously transfers the contract, within the meaning of paragraph (c)(3) of this section, to E. At the time of the transfer, the fair market value of the contract is $200,000 and D had paid $50,000 in premiums under the arrangement. In addition, at the time of the transfer, E had previously received $80,000 of benefits described in paragraph (d)(3) of this section, which were excludable from E's gross income under section 102.

(ii) E's investment in the contract is $50,000, consisting of the $50,000 of premiums paid by D. The $80,000 of benefits described in paragraph (d)(3) of this section that E received is not included in E's investment in the contract because such amounts were excludable from E's gross income at the time of receipt.

(iii) *No investment in the contract for current life insurance protection.* No amount allocable to current life insurance protection provided to the transferee (the cost of which was paid by the transferee or the value of which was provided to the transferee) is treated as consideration paid to acquire the contract under section 72(g)(1) to determine the aggregate premiums paid by the transferee for purposes of determining the transferee's investment in the contract under section 72(e) after the transfer.

(h) *Examples.* The following examples illustrate the rules of this section. Except as otherwise provided, each of the examples assumes that the employer (R) is the owner (as defined in paragraph (c)(1) of this section) of a life insurance contract that is part of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section, that the life insurance contract is not a modified endowment contract under section 7702A, that the compensation paid to the employee (E) is reasonable, and that E makes no premium payments. The examples are as follows:

Example 1. (i) In year 1, R purchases a life insurance contract on the life of E. R is named as the policy owner of the contract. R and E enter into an arrangement under which R will pay all the premiums on the life insurance contract until the termination of the arrangement or E's death. Upon termination of the arrangement or E's death, R is entitled to receive the greater of the aggregate premiums or the cash surrender value of the contract. The balance of the death benefit will be paid to a beneficiary designated by E.

(ii) Because R is designated as the policy owner, R is the owner of the contract under paragraph (c)(1) of this section. E is a non-owner of the contract. Under the arrangement between R and E, a portion of the death benefit is payable to a beneficiary designated by E. The arrangement is a split-dollar life insurance arrangement under paragraph (b)(1) or (2) of this section. For each year that the split-dollar life insurance arrangement is in effect, the arrangement is described in paragraph (d)(2) of this section and E must include in income the value of current life insurance protection, as required by paragraph (d)(2) of this section.

Example 2. (i) The facts are the same as in *Example 1* except that, upon termination of the arrangement or E's death, R is entitled to receive the lesser of the aggregate premiums or the cash surrender value of the contract.

(ii) For each year that the split-dollar life insurance arrangement is in effect, the arrangement is described in paragraph (d)(3) of this section and E must include in gross income the value of the economic benefit attributable to E's interest in the life

insurance contract, as required by paragraph (d)(3) of this section.

Example 3. (i) The facts are the same as in *Example 1* except that in year 5, R and E modify the split-dollar life insurance arrangement to provide that, upon termination of the arrangement or E's death, R is entitled to receive the greater of the aggregate premiums or one-half the cash surrender value of the contract.

(ii) In year 5 (and subsequent years), the arrangement is described in paragraph (d)(3) of this section and E must include in gross income the value of the economic benefit attributable to E's interest in the life insurance contract, as required by paragraph (d)(3) of this section. Because the modification made by R and E in year 5 does not involve the transfer (within the meaning of paragraph (c)(3) of this section) of an undivided interest in the life insurance contract from R to E, the modification is not a transfer for purposes of paragraph (g) of this section.

Example 4. (i) The facts are the same as in *Example 2* except that in year 7, R and E modify the split-dollar life insurance arrangement to provide that, upon termination of the arrangement or E's death, R will be paid the lesser of 80 percent of the aggregate premiums or the cash surrender value of the contract.

(ii) The arrangement is described in paragraph (d)(3) of this section. In year 7 (and in subsequent years), E must include in gross income the value of the increased economic benefits described in paragraph (d)(3) of this section resulting from the contract modification under which E obtains rights to a larger amount of the cash value of the contract (attributable to the fact that R will forgo the right to recover 20 percent of the premiums R pays).

Example 5. (i) The facts are the same as in *Example 3* except that in year 7, E is designated as the policy owner. At that time, E's rights to the contract are substantially vested as defined in § 1.83–3(b).

(ii) In year 7, R is treated as having made a transfer (within the meaning of paragraph (c)(3) of this section) of the life insurance contract to E. E must include in gross income the amount determined under paragraph (g)(1) of this section.

(iii) After the transfer of the contract to E, E is the owner of the contract and any premium payments by R will be included in E's income under paragraph (b)(5) of this section and § 1.61–2(d)(2)(ii)(A) (unless R's payments are split-dollar loans as defined in § 1.7872–15(b)(1)).

Example 6. (i) In year 1, E and R enter into a split-dollar life insurance arrangement as defined in paragraph (b)(2) of this section. Under the arrangement, R is required to make annual premium payments of $10,000 and E is required to make annual premium payments of $500. In year 5, a $500 policy owner dividend payable to E is declared by the insurance company. E directs the insurance company to use the $500 as E's premium payment for year 5.

(ii) For each year the arrangement is in effect, the arrangement is described in paragraph (d)(3) of this section and E must include in gross income the value of the economic benefits granted during the year, as required by paragraph (d)(3) of this section over the $500 premium payments paid by E. In year 5, E must also include in gross income as compensation the excess, if any, of the $500 distributed to E from the proceeds of the policy owner dividend over the amount determined under paragraph (e)(3)(ii) of this section.

(iii) R must include in income the premiums paid by E during the years the split-dollar life insurance arrangement is in effect, including the $500 of the premium E paid in year 5 with proceeds of the policy owner dividend. R's investment in the contract is increased in an amount equal to the premiums paid by E, including the $500 of the premium paid by E in year 5 from the proceeds of the policy owner dividend. In year 5, R is treated as receiving a $500 distribution under the contract, which is taxed pursuant to section 72.

Example 7. (i) The facts are the same as in *Example 2* except that in year 10, E withdraws $100,000 from the cash value of the contract.

(ii) In year 10, R is treated as receiving a $100,000 distribution from the insurance company. This amount is treated as an amount received by R under the contract and taxed pursuant to section 72. This amount reduces R's investment in the contract under section 72(e). R is treated as paying the $100,000 to E as cash compensation, and E must include that amount in gross income less any amounts determined under paragraph (e)(3)(ii) of this section.

Example 8. (i) The facts are the same as in *Example 7* except E receives the proceeds of a $100,000 specified policy loan directly from the insurance company.

(ii) The transfer of the proceeds of the specified policy loan to E is treated as a loan by the insurance company to R. Under the rules of section 72(e), the $100,000 loan is not included in R's income and does not reduce R's investment in the contract. R is treated as paying the $100,000 of loan proceeds to E as cash compensation. E must include that amount in gross income less any amounts determined under paragraph (e)(3)(ii) of this section.

(i) [Reserved]

(j) *Effective date*—(1) *General rule.* This section applies to any split-dollar life insurance arrangement (as defined in paragraph (b)(1) or (2) of this section) entered into after the date the final regulations are published in the **Federal Register**.

(2) *Early reliance*—(i) *General rule.* Taxpayers may rely on this section for the treatment of any split-dollar life insurance arrangement (as defined in paragraph (b)(1) or (2) of this section) entered into on or before the date described in paragraph (j)(1) of this section, provided that all taxpayers who are parties to the arrangement treat the arrangement consistently under this section and, in the case of an arrangement described in paragraph (d)(3) of this section, also satisfy the requirements in paragraph (j)(2)(ii) of this section.

(ii) *Equity split-dollar life insurance arrangements.* Parties to an arrangement described in paragraph (d)(3) of this section may rely on this section only if the value of all economic benefits taken into account by the parties exceeds the value of the economic benefits the parties would have taken into account if paragraph (d)(2) of this section were applicable to the arrangement (determined using the life insurance premium factor designated in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter)), thereby reflecting the fact that such an arrangement provides the non-owner with economic benefits that are more valuable than current life insurance protection.

(3) *Modified arrangements treated as new arrangements.* An arrangement entered into on or before the date set forth in paragraph (j)(1) of this section that is materially modified after the date set forth in paragraph (j)(1) of this section is treated as a new arrangement entered into on the date of the modification.

Par. 4. Section 1.83–1 is amended by:

1. Removing the second sentence of paragraph (a)(2).

2. Adding a sentence at the end of paragraph (a)(2).

The addition reads as follows:

§ 1.83–1 Property transferred in connection with the performance of services.

(a) * * *

(2) *Life insurance.* * * * For the taxation of life insurance protection under a split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)), see § 1.61–22.

* * * * *

Par. 5. Section 1.83–3 is amended by:

1. Adding a sentence at the end of paragraph (a)(1).

2. Revising the penultimate sentence in paragraph (e).

The addition and revision read as follows:

§ 1.83–3 Meaning and use of certain terms.

(a) * * * (1) * * * For special rules applying to the transfer of a life insurance contract (or an undivided interest therein) that is part of a split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)), see § 1.61–22(g).

* * * * *

(e) * * * In the case of a transfer of a contract, or any undivided interest therein, providing death benefit protection (including a life insurance contract, retirement contract, or

endowment contract) after the date the final regulations are published in the **Federal Register**, the cash surrender value and all other rights under such contract (including any supplemental agreements thereto and whether or not guaranteed), other than current life insurance protection, are treated as property for purposes of this section.

* * *

* * * * *

Par. 6. Section 1.83–6 is amended as follows:

1. Redesignating paragraph (a)(5) as paragraph (a)(6).

2. Adding a new paragraph (a)(5).

The addition reads as follows:

§ 1.83–6 Deduction by employer.

(a) * * *

(5) *Transfer of life insurance contract (or an undivided interest therein)*—(i) *General rule.* In the case of a transfer of a life insurance contract (or an undivided interest therein) described in § 1.61–22(c)(3) in connection with the performance of services, a deduction is allowable under paragraph (a)(1) of this section to the person for whom the services were performed. The amount of the deduction, if allowable, is equal to the sum of the amount included as compensation in the gross income of the service provider under § 1.61–22(g)(1) and the amount determined under § 1.61–22(g)(1)(ii).

(ii) *Effective date*—(A) *General rule.* Paragraph (a)(5)(i) of this section applies to any split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)) entered into after the date the final regulations are published in the **Federal Register**.

(B) *Early reliance*—(*1*) *General rule.* Taxpayers may rely on this paragraph (a)(5) for the treatment of any split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)) entered into on or before the date described in paragraph (a)(5)(ii)(A) of this section, provided that all taxpayers who are parties to the arrangement treat the arrangement consistently under § 1.61–22(d) through (g) and, in the case of an arrangement described in § 1.61–22(d)(3), also satisfy the requirements in paragraph (a)(5)(ii)(B)(*2*) of this section.

(*2*) *Equity split-dollar life insurance arrangements.* Parties to an arrangement described in § 1.61–22(d)(3) may rely on this paragraph (a)(5) only if the value of all economic benefits taken into account by the parties exceeds the value of the economic benefits the parties would have taken into account if § 1.61–22(d)(2) were applicable to the arrangement (determined using the life insurance premium factor designated in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter)), thereby reflecting the fact that such an arrangement provides the non-owner with economic benefits that are more valuable than current life insurance protection.

(C) *Modified arrangements treated as new arrangements.* An arrangement entered into on or before the date set forth in paragraph (a)(5)(ii)(A) of this section that is materially modified after the date set forth in paragraph (a)(5)(ii)(A) of this section is treated as a new arrangement entered into on the date of the modification.

* * * * *

Par. 7. In § 1.301–1, paragraph (q) is added to read as follows:

§ 1.301–1 Rules applicable with respect to distributions of money and other property.

* * * * *

(q) *Split-dollar and other life insurance arrangements*—(1) *Split-dollar life insurance arrangements*—(i) *Distribution of economic benefits.* The provision by a corporation to its shareholder pursuant to a split-dollar life insurance arrangement, as defined in § 1.61–22(b)(1) or (2), of economic benefits described in § 1.61–22(d) or of amounts described in § 1.61–22(e) is treated as a distribution of property, the amount of which is determined under § 1.61–22(d) and (e), respectively.

(ii) *Distribution of entire contract or undivided interest therein.* A transfer (within the meaning of § 1.61–22(c)(3)) of the ownership of a life insurance contract (or an undivided interest therein) that is part of a split-dollar life insurance arrangement is a distribution of property, the amount of which is determined pursuant to § 1.61–22(g)(1) and (2).

(2) *Other life insurance arrangements.* A payment by a corporation on behalf of a shareholder of premiums on a life insurance contract or an undivided interest therein that is owned by the shareholder constitutes a distribution of property, even if such payment is not part of a split-dollar life insurance arrangement under § 1.61–22(b).

(3) *When distribution is made*—(i) *In general.* Except as provided in paragraph (q)(3)(ii) of this section, paragraph (b) of this section shall apply to determine when a distribution described in paragraph (q)(1) or (2) of this section is taken into account by a shareholder.

(ii) *Exception.* Notwithstanding paragraph (b) of this section, a distribution described in paragraph (q)(1)(ii) of this section shall be treated as made by a corporation to its shareholder at the time that the life insurance contract, or an undivided interest therein, is transferred (within the meaning of § 1.61–22(c)(3)) to the shareholder.

(4) *Effective date*—(i) *General rule.* This paragraph (q) applies to split-dollar and other life insurance arrangements entered into after the date the final regulations are published in the **Federal Register**.

(ii) *Early reliance*—(A) *General rule.* Taxpayers may rely on this paragraph (q) for the treatment of any split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)) entered into on or before the date described in paragraph (q)(4)(i) of this section, provided that all taxpayers who are parties to the arrangement treat the arrangement consistently under § 1.61–22(d) through (g) and, in the case of an arrangement described in § 1.61–22(d)(3), also satisfy the requirements in paragraph (q)(4)(ii)(B) of this section.

(B) *Equity split-dollar life insurance arrangements.* Parties to an arrangement described in § 1.61–22(d)(3) may rely on this paragraph (q) only if the value of all economic benefits taken into account by the parties exceeds the value of the economic benefits the parties would have taken into account if § 1.61–22(d)(2) were applicable to the arrangement (determined using the life insurance premium factor designated in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter)), thereby reflecting the fact that such an arrangement provides the non-owner with economic benefits that are more valuable than current life insurance protection.

(iii) *Modified arrangements treated as new arrangements.* An arrangement entered into on or before the date set forth in paragraph (q)(4)(i) of this section that is materially modified after the date set forth in paragraph (q)(4)(i) of this section is treated as a new arrangement entered into on the date of the modification.

Par. 8. Section 1.1402(a)–18 is added to read as follows:

§ 1.1402(a)–18 Split-dollar life insurance arrangements.

See § 1.61–22 for rules relating to the treatment of split-dollar life insurance arrangements.

Par. 9. Section 1.7872–15 is added to read as follows:

§ 1.7872–15 Split-dollar loans.

(a) *General rules*—(1) *Introduction.* This section applies to split-dollar loans as defined in paragraph (b)(1) of this section. If a split-dollar loan is not a below-market loan, then, except as provided in this section, the loan is governed by the general rules for debt

instruments (including the rules for original issue discount (OID) under sections 1271 through 1275 and the regulations thereunder). If a split-dollar loan is a below-market loan, then, except as provided in this section, the loan is governed by section 7872 and the regulations thereunder. The timing, amount, and characterization of the imputed transfers between the lender and borrower of a below-market split-dollar loan depend upon the relationship between the parties and upon whether the loan is a demand loan or a term loan. For additional rules relating to the treatment of split-dollar life insurance arrangements, see § 1.61–22.

(2) *Loan treatment*—(i) *General rule.* A payment made pursuant to a split-dollar life insurance arrangement is treated as a loan for Federal tax purposes, and the owner and non-owner are treated, respectively, as the borrower and the lender, if—

(A) The payment is made either directly or indirectly by the non-owner to the owner (including a premium payment made by the non-owner directly to the insurance company with respect to the policy held by the owner);

(B) The payment is a loan under general principles of Federal tax law or, if it is not a loan under general principles of Federal tax law, a reasonable person would expect the payment to be repaid in full to the non-owner (whether with or without interest); and

(C) The repayment is to be made from, or is secured by, either the policy's death benefit proceeds or its cash surrender value.

(ii) *Payments that are only partially repayable.* For purposes of § 1.61–22 and this section, if a non-owner makes a payment pursuant to a split-dollar life insurance arrangement and the non-owner is entitled to repayment of some but not all of the payment, the payment is treated as two payments: one that is repayable and one that is not. Thus, paragraph (a)(2)(i) of this section refers to the repayable payment.

(iii) *Treatment of payments that are not split-dollar loans.* See § 1.61–22(b)(5) for the treatment of payments by a non-owner that are not split-dollar loans.

(iv) *Examples.* The provisions of this paragraph (a)(2) are illustrated by the following examples:

Example 1. Assume an employee owns a life insurance policy under a split-dollar life insurance arrangement, the employer makes premium payments on this policy, there is a reasonable expectation that the payments will be repaid, and the repayments are secured by the policy. Under paragraph (a)(2)(i) of this section, each premium payment is a loan for Federal tax purposes.

Example 2. (i) Assume an employee owns a life insurance policy under a split-dollar life insurance arrangement and the employer makes premium payments on this policy. The employer is entitled to be repaid 80 percent of each premium payment, and the repayments are secured by the policy. Under paragraph (a)(2)(ii) of this section, the taxation of 20 percent of each premium payment is governed by § 1.61–22(b)(5). If there is a reasonable expectation that the remaining 80 percent of a payment will be repaid in full, then, under paragraph (a)(2)(i) of this section, the 80 percent is a loan for Federal tax purposes.

(ii) If less than 80 percent of a premium payment is reasonably expected to be repaid, then this paragraph (a)(2) does not cause any of the payment to be a loan for Federal tax purposes. If the payment is not a loan under general principles of Federal tax law, the entire premium payment is governed by § 1.61–22(b)(5).

(3) *No de minimis exceptions.* For purposes of this section, section 7872 is applied to a split-dollar loan without regard to the de minimis exceptions in section 7872(c)(2) and (3).

(b) *Definitions.* For purposes of this section, the terms *split-dollar life insurance arrangement*, *owner*, and *non-owner* have the same meanings as provided in § 1.61–22(b) and (c). In addition, the following definitions apply for purposes of this section:

(1) A *split-dollar loan* is a loan described in paragraph (a)(2)(i) of this section.

(2) A *split-dollar demand loan* is any split-dollar loan that is payable in full at any time on the demand of the lender (or within a reasonable time after the lender's demand).

(3) A *split-dollar term loan* is any split-dollar loan other than a split-dollar demand loan. See paragraph (e)(5) of this section for special rules regarding certain split-dollar term loans payable on the death of an individual, certain split-dollar term loans conditioned on the future performance of substantial services by an individual, and gift split-dollar term loans.

(c) *Interest deductions for split-dollar loans.* The borrower may not deduct any qualified stated interest, OID, or imputed interest on a split-dollar loan. See sections 163(h) and 264(a). In certain circumstances, an indirect participant may be allowed to deduct qualified stated interest, OID, or imputed interest on a deemed loan. See paragraph (e)(2)(iii) of this section (relating to indirect loans).

(d) *Treatment of split-dollar loans providing for nonrecourse payments—(1) In general.* Except as provided in paragraph (d)(2) of this section, if a payment on a split-dollar loan is nonrecourse to the borrower, the payment is a contingent payment for purposes of this section. See paragraph (j) of this section for the treatment of a split-dollar loan that provides for one or more contingent payments.

(2) *Exception for certain loans with respect to which the parties to the split-dollar life insurance arrangement make a representation*—(i) *Requirements.* An otherwise noncontingent payment on a split-dollar loan that is nonrecourse to the borrower is not a contingent payment under this section if the following requirements are satisfied—

(A) The split-dollar loan provides for interest payable at a stated rate that is either a fixed rate or a variable rate described in paragraph (g) of this section; and

(B) The parties to the split-dollar life insurance arrangement represent in writing that a reasonable person would expect that all payments under the loan will be made.

(ii) *Time and manner for providing written representation.* The Commissioner may prescribe the time and manner for providing the written representation required by paragraph (d)(2)(i)(B) of this section. Until the Commissioner prescribes otherwise, the written representation that is required by paragraph (d)(2)(i)(B) of this section must meet the requirements of this paragraph (d)(2)(ii). Both the borrower and the lender must sign the representation not later than the last day (including extensions) for filing the Federal income tax return of the borrower or lender, whichever is earlier, for the taxable year in which the lender makes the first split-dollar loan under the split-dollar life insurance arrangement. This representation must include the names, addresses, and taxpayer identification numbers of the borrower, lender, and any indirect participants. Unless otherwise stated therein, this representation applies to all subsequent split-dollar loans made pursuant to the split-dollar life insurance arrangement. Each party should retain an original of the representation as part of its books and records and should attach a copy of this representation to its Federal income tax return for any taxable year in which the lender makes a loan to which the representation applies.

(e) *Below-market split-dollar loans*—(1) *Scope*—(i) *In general.* This paragraph (e) applies to below-market split-dollar loans enumerated under section 7872(c)(1), which include gift loans, compensation-related loans, and corporation-shareholder loans. The characterization of a split-dollar loan under section 7872(c)(1) and of the

imputed transfers under section 7872(a)(1) and (b)(1) depends upon the relationship between the lender and the borrower or the lender, borrower, and any indirect participant. For example, if the lender is the borrower's employer, the split-dollar loan is generally a compensation-related loan, and any imputed transfer from the lender to the borrower is generally a payment of compensation. The loans covered by this paragraph (e) include indirect loans between the parties. See paragraph (e)(2) of this section for the treatment of certain indirect split-dollar loans. See paragraph (f) of this section for the treatment of any stated interest or OID on split-dollar loans. See paragraph (j) of this section for additional rules that apply to a split-dollar loan that provides for one or more contingent payments.

(ii) *Significant-effect split-dollar loans.* If a direct or indirect below-market split-dollar loan is not enumerated in section 7872(c)(1)(A), (B), or (C), the loan is a significant-effect loan under section 7872(c)(1)(E).

(2) *Indirect split-dollar loans*—(i) *In general.* If, based on all the facts and circumstances, including the relationship between the borrower or lender and some third person (the indirect participant), the effect of a below-market split-dollar loan is to transfer value from the lender to the indirect participant and from the indirect participant to the borrower, then the below-market split-dollar loan is restructured as two or more successive below-market loans (the deemed loans) as provided in this paragraph (e)(2). The transfers of value described in the preceding sentence include (but are not limited to) a gift, compensation, a capital contribution, and a distribution under section 301 (or, in the case of an S corporation, under section 1368). The deemed loans are—

(A) A deemed below-market split-dollar loan made by the lender to the indirect participant; and

(B) A deemed below-market split-dollar loan made by the indirect participant to the borrower.

(ii) *Application.* Each deemed loan is treated as having the same provisions as the original loan between the lender and borrower, and section 7872 is applied to each deemed loan. Thus, for example, if, under a split-dollar life insurance arrangement, an employer (lender) makes an interest-free split-dollar loan to an employee's child (borrower), the loan is generally restructured as a deemed compensation-related below-market split-dollar loan from the lender to the employee (the indirect participant) and a second deemed gift below-market split-dollar loan from the employee to the employee's child. In appropriate circumstances, section 7872(d)(1) may limit the interest that accrues on a deemed loan for Federal income tax purposes. For loan arrangements between husband and wife, see section 7872(f)(7).

(iii) *Limitations on investment interest for purposes of section 163(d).* For purposes of section 163(d), the imputed interest from the indirect participant to the lender that is taken into account by the indirect participant under this paragraph (e)(2) is not investment interest to the extent of the excess, if any, of—

(A) The imputed interest from the indirect participant to the lender that is taken into account by the indirect participant; over

(B) The imputed interest to the indirect participant from the borrower that is recognized by the indirect participant.

(iv) *Example.* The provisions of this paragraph (e)(2) are illustrated by the following example:

Example. (i) On January 1, 2009, Employer *X* and Individual *A* enter into a split-dollar life insurance arrangement under which *A* is named as the policy owner. *A* is the child of B, an employee of *X*. On January 1, 2009, *X* makes a $30,000 premium payment, repayable upon demand without interest. Repayment of the premium payment is fully recourse to *A*. The payment is a below-market split-dollar demand loan. *A*'s net investment income for 2009 is $1,100, and there are no other outstanding loans between *A* and *B*. Assume that the blended annual rate for 2009 is 5 percent, compounded annually.

(ii) Based on the relationships among the parties, the effect of the below-market split-dollar loan from *X* to *A* is to transfer value from *X* to *B* and then to transfer value from *B* to *A*. Under paragraph (e)(2) of this section, the below-market split-dollar loan from *X* to *A* is restructured as two deemed below-market split-dollar demand loans: a compensation-related below-market split-dollar loan between *X* and *B* and a gift below-market split-dollar loan between *B* and *A*. Each of the deemed loans has the same terms and conditions as the original loan.

(iii) Under paragraph (e)(3) of this section, the amount of forgone interest deemed paid to *B* by *A* in 2009 is $1,500 ([$30,000 x 0.05]—0). Under section 7872(d)(1), however, the amount of forgone interest deemed paid to *B* by *A* is limited to $1,100 (*A*'s net investment income for the year). Under paragraph (e)(2)(iii) of this section, *B*'s deduction under section 163(d) in 2009 for interest deemed paid on *B*'s deemed loan from *X* is limited to $1,100 (the interest deemed received from *A*).

(3) *Split-dollar demand loans*—(i) *In general.* This paragraph (e)(3) provides rules for testing split-dollar demand loans for sufficient interest, and, if the loans do not provide for sufficient interest, rules for the calculation and treatment of forgone interest on these loans. See paragraph (g) of this section for additional rules that apply to a split-dollar loan providing for certain variable rates of interest.

(ii) *Testing for sufficient interest.* Each calendar year that a split-dollar demand loan is outstanding, the loan is tested to determine if the loan provides for sufficient interest. A split-dollar demand loan provides for sufficient interest for the calendar year if the rate (based on annual compounding) at which interest accrues on the loan's adjusted issue price during the year is no lower than the blended annual rate for the year. (The Internal Revenue Service publishes the blended annual rate in the Internal Revenue Bulletin in July of each year (see § 601.601(d)(2)(ii) of this chapter).) If the loan does not provide for sufficient interest, the loan is a below-market split-dollar demand loan for that calendar year. See paragraph (e)(3)(iii) of this section to determine the amount and treatment of forgone interest for each calendar year the loan is below-market.

(iii) *Imputations*—(A) *Amount of forgone interest.* For each calendar year, the amount of forgone interest on a split-dollar demand loan is treated as transferred by the lender to the borrower and as retransferred as interest by the borrower to the lender. This amount is the excess of—

(*1*) The amount of interest that would have been payable on the loan for the calendar year if interest accrued on the loan's adjusted issue price at the AFR (determined in paragraph (e)(3)(ii) of this section) and were payable annually on the day referred to in paragraph (e)(3)(iii)(B) of this section; over

(*2*) Any interest that accrues on the loan during the year.

(B) *Timing of transfers of forgone interest*—(*1*) *In general.* Except as provided in paragraphs (e)(3)(iii)(B)(*2*) and (*3*) of this section, the forgone interest (as determined under paragraph (e)(3)(iii)(A) of this section) that is attributable to a calendar year is treated as transferred by the lender to the borrower (and retransferred as interest by the borrower to the lender) on the last day of the calendar year and is accounted for by each party to the split-dollar loan in a manner consistent with that party's method of accounting.

(*2*) *Exception for death, liquidation, or termination of the borrower.* In the taxable year in which the borrower dies (in the case of borrower who is a natural person) or is liquidated or otherwise terminated (in the case of a borrower other than a natural person), any forgone interest is treated, for both the

lender and the borrower, as transferred and retransferred on the last day of the borrower's final taxable year.

(*3*) *Exception for repayment of below-market split-dollar loan.* Any forgone interest is treated, for both the lender and the borrower, as transferred and retransferred on the day the split-dollar loan is repaid in full.

(4) *Split-dollar term loans*—(i) *In general.* Except as provided in paragraph (e)(5) of this section, this paragraph (e)(4) provides rules for testing split-dollar term loans for sufficient interest and, if the loans do not provide for sufficient interest, rules for imputing payments on these loans. See paragraph (g) of this section for additional rules that apply to a split-dollar loan providing for certain variable rates of interest.

(ii) *Testing a split-dollar term loan for sufficient interest.* A split-dollar term loan is tested on the day the loan is made to determine if the loan provides for sufficient interest. A split-dollar term loan provides for sufficient interest if the imputed loan amount equals or exceeds the amount loaned. The imputed loan amount is the present value of all payments due under the loan, determined as of the date the loan is made, using a discount rate equal to the AFR in effect on that date. The AFR used for purposes of the preceding sentence must be appropriate for the loan's term (short-term, mid-term, or long-term) and for the compounding period used in computing the present value. See section 1274(d)(1). If the split-dollar loan does not provide for sufficient interest, the loan is a below-market split-dollar term loan subject to paragraph (e)(4)(iv) of this section.

(iii) *Determining loan term.* This paragraph (e)(4)(iii) provides rules to determine the term of a split-dollar term loan for purposes of paragraph (e)(4)(ii) of this section. The term of the loan determined under this paragraph (e)(4)(iii) (other than paragraph (e)(4)(iii)(C) of this section) applies to determine the split-dollar loan's term, payment schedule, and yield for all purposes of this section.

(A) *In general.* Except as provided in paragraph (e)(4)(iii)(B), (C), (D) or (E) of this section, the term of a split-dollar term loan is based on the period from the date the loan is made until the loan's stated maturity date.

(B) *Special rules for certain options*—(*1*) *Payment schedule that minimizes yield.* If a split-dollar term loan is subject to unconditional options that are exercisable at one or more times during the term of the loan and that, if exercised, would require full payment of the loan on a date other than the stated maturity date, then the rules of this paragraph (e)(4)(iii)(B)(*1*) determine the term of the loan. For purposes of determining a split-dollar loan's term, the borrower is projected to exercise or not exercise an option or combination of options in a manner that minimizes the loan's overall yield. Similarly, the lender is projected to exercise or not exercise an option or combination of options in a manner that minimizes the loan's overall yield. If different projected patterns of exercise or non-exercise produce the same minimum yield, the parties are projected to exercise or not exercise an option or combination of options in a manner that produces the longest term.

(*2*) *Change in circumstances.* If the borrower (or lender) does or does not exercise the option as projected under paragraph (e)(4)(iii)(B)(*1*) of this section, the split-dollar loan is treated as retired and reissued on the date the option is or is not exercised. The amount for which the loan is deemed to be retired and reissued is the loan's adjusted issue price on that date. The reissued loan must be retested using the appropriate AFR in effect on the date of reissuance to determine whether it is a below-market loan.

(*3*) *Examples.* The following examples illustrate the rules of this paragraph (e)(4)(iii)(B):

Example 1. Employee *B* issues a 10-year split-dollar term loan to Employer *Y*. B has the right to prepay the loan at the end of year 5. Interest is payable on the split-dollar loan at 1 percent for the first 5 years and at 10 percent for the remaining 5 years. Under paragraph (e)(4)(iii)(B)(*1*) of this section, this arrangement is treated as a 5-year split-dollar term loan from *Y* to *B*, with interest payable at 1 percent.

Example 2. The facts are the same as the facts in *Example 1*, except that *B* does not in fact prepay the split-dollar loan at the end of year 5. Under paragraph (e)(4)(iii)(B)(*2*) of this section, the first loan is treated as retired at the end of year 5 and a new 5-year split-dollar term loan is issued at that time, with interest payable at 10 percent.

Example 3. Employee *A* issues a 10-year split-dollar term loan on which the lender, Employer *X*, has the right to demand payment at the end of year 2. Interest is payable on the split-dollar loan at 7 percent each year that the loan is outstanding. Under paragraph (e)(4)(iii)(B)(*1*) of this section, this arrangement is treated as a 10-year split-dollar term loan because the exercise of *X*'s put option would not reduce the yield of the loan (the yield of the loan is 7 percent, compounded annually, whether or not *X* demands payment).

(C) *Split-dollar term loans providing for certain variable rates of interest.* If a split-dollar term loan is subject to paragraph (g) of this section (a split-dollar loan that provides for certain variable rates of interest), the term of the loan for purposes of paragraph (e)(4)(ii) of this section is determined under paragraph (g)(3)(ii) of this section.

(D) *Split-dollar loans payable upon the death of an individual.* If a split-dollar term loan is described in paragraph (e)(5)(ii)(A) or (v)(A) of this section, the term of the loan for purposes of paragraph (e)(4)(ii) of this section is determined under paragraph (e)(5)(ii)(C) or (v)(B)(*2*) of this section, whichever is applicable.

(E) *Split-dollar loans conditioned on the future performance of substantial services by an individual.* If a split-dollar term loan is described in paragraph (e)(5)(iii)(A)(*1*) or (v)(A) of this section, the term of the loan for purposes of paragraph (e)(4)(ii) of this section is determined under paragraph (e)(5)(iii)(C) or (v)(B)(*2*) of this section, whichever is applicable.

(iv) *Timing and amount of imputed transfer in connection with below-market split-dollar term loans.* If a split-dollar term loan is a below-market loan, then the rules applicable to below-market term loans under section 7872 apply. In general, the loan is recharacterized as consisting of two portions: an imputed loan amount (as defined in paragraph (e)(4)(ii) of this section) and an imputed transfer from the lender to the borrower. The imputed transfer occurs at the time the loan is made (for example, when the lender makes a premium payment on a life insurance policy) and is equal to the excess described in paragraph (e)(4)(ii) of this section.

(v) *Amount treated as OID.* In the case of any below-market split-dollar term loan described in this paragraph (e)(4), for purposes of applying sections 1271 through 1275 and the regulations thereunder, the issue price of the loan is the amount determined under § 1.1273–2, reduced by the amount of the imputed transfer described in paragraph (e)(4)(iv) of this section. Thus, the loan is generally treated as having OID in an amount equal to the amount of the imputed transfer described in paragraph (e)(4)(iv) of this section, in addition to any other OID on the loan (determined without regard to section 7872(b)(2)(A) or this paragraph (e)(4)).

(vi) *Example.* The provisions of this paragraph (e)(4) are illustrated by the following example:

Example. (i) On July 1, 2009, Corporation *Z* and Shareholder *A* enter into a split-dollar life insurance arrangement under which *A* is named as the policy owner. On July 1, 2009, *Z* makes a $100,000 premium payment, repayable without interest in 15 years. Repayment of the premium payment is fully

recourse to *A*. The premium payment is a split-dollar term loan. Assume the long-term AFR (based on annual compounding) at the time the loan is made is 7 percent.

(ii) Based on a 15-year term and a discount rate of 7 percent, compounded annually (the long-term AFR), the present value of the payments under the loan is $36,244.60, determined as follows: $100,000/[1+(0.07/1)]^{15}. This loan is a below-market split-dollar term loan because the imputed loan amount of $36,244.60 (the present value of the amount required to be repaid to *Z*) is less than the amount loaned ($100,000).

(iii) In accordance with section 7872(b)(1) and paragraph (e)(4)(iv) of this section, on the date that the loan is made, *Z* is treated as transferring to *A* $63,755.40 (the excess of $100,000 (amount loaned) over $36,244.60 (imputed loan amount)). Under section 7872 and paragraph (e)(1)(i) of this section, *Z* is treated as making a section 301 distribution to *A* on July 1, 2009, of $63,755.40. *Z* must take into account as OID an amount equal to the imputed transfer. See § 1.1272–1 for the treatment of OID.

(5) *Special rules for certain split-dollar term loans*—(i) *In general.* This paragraph (e)(5) provides rules for split-dollar loans payable on the death of an individual, split-dollar loans conditioned on the future performance of substantial services by an individual, and gift term loans. These split-dollar loans are split-dollar term loans for purposes of determining whether the loan provides for sufficient interest. If, however, the loan is a below-market split-dollar loan, then, except as provided in paragraph (e)(5)(v) of this section, forgone interest is determined annually, similar to a demand loan, but using an AFR that is appropriate for the loan's term and that is determined when the loan is issued.

(ii) *Split-dollar loans payable not later than the death of an individual*—(A) *Applicability.* This paragraph (e)(5)(ii) applies to a split-dollar term loan payable not later than the death of an individual.

(B) *Treatment of loan.* A split-dollar loan described in paragraph (e)(5)(ii)(A) of this section is tested under paragraph (e)(4)(ii) of this section to determine if the loan provides for sufficient interest. If the loan provides for sufficient interest, then section 7872 does not apply to the loan, and the interest on the loan is taken into account under paragraph (f) of this section. If the loan does not provide for sufficient interest, then section 7872 applies to the loan, and the loan is treated as a below-market demand loan subject to paragraph (e)(3)(iii) of this section. For each year that the loan is outstanding, however, the AFR used in the determination of forgone interest under paragraph (e)(3)(iii) of this section is not the blended annual rate but rather is the AFR (based on annual compounding) appropriate for the loan's term for the month in which the loan is made. See paragraph (e)(5)(ii)(C) of this section to determine the loan's term.

(C) *Term of loan.* For purposes of paragraph (e)(5)(ii)(B) of this section, the term of a split-dollar loan payable on the death of an individual (including the death of the last survivor of a group of individuals) is the life expectancy as determined under the appropriate table in § 1.72–9 on the day the loan is made. If a split-dollar loan is payable on the earlier of the individual's death or another term determined under paragraph (e)(4)(iii) of this section, the term of the loan is whichever term is shorter.

(D) *Retirement and reissuance of loan.* If a split-dollar loan described in paragraph (e)(5)(ii)(A) of this section remains outstanding longer than the term determined under paragraph (e)(5)(ii)(C) of this section because the individual outlived his or her life expectancy, the split-dollar loan is treated as retired and reissued as a split-dollar demand loan at that time for the loan's adjusted issue price on that date. However, the loan is not retested at that time to determine whether the loan provides for sufficient interest. For purposes of determining forgone interest under paragraph (e)(5)(ii)(B) of this section, the appropriate AFR for the reissued loan is the AFR determined under (e)(5)(ii)(B) of this section on the day the loan was originally made.

(iii) *Split-dollar loans conditioned on the future performance of substantial services by an individual*—(A) *Applicability—(1) In general.* This paragraph (e)(5)(iii) applies to a split-dollar term loan if the benefits of the interest arrangements of the loan are not transferable and are conditioned on the future performance of substantial services (within the meaning of section 83) by an individual.

(*2*) *Exception.* Notwithstanding paragraph (e)(5)(iii)(A)(*1*) of this section, this paragraph (e)(5)(iii) does not apply to a split-dollar loan described in paragraph (e)(5)(v)(A) of this section (regarding a split-dollar loan that is payable on the later of a term certain and the date on which the condition to perform substantial future services by an individual ends).

(B) *Treatment of loan.* A split-dollar loan described in paragraph (e)(5)(iii)(A)(*1*) of this section is tested under paragraph (e)(4)(ii) of this section to determine if the loan provides for sufficient interest. Except as provided in paragraph (e)(5)(iii)(D) of this section, if the loan provides for sufficient interest, then section 7872 does not apply to the loan and the interest on the loan is taken into account under paragraph (f) of this section. If the loan does not provide for sufficient interest, then section 7872 applies to the loan and the loan is treated as a below-market demand loan subject to paragraph (e)(3)(iii) of this section. For each year that the loan is outstanding, however, the AFR used in the determination of forgone interest under paragraph (e)(3)(iii) of this section is not the blended annual rate but rather is the AFR (based on annual compounding) appropriate for the loan's term for the month in which the loan is made. See paragraph (e)(5)(iii)(C) of this section to determine the loan's term.

(C) *Term of loan.* The term of a split-dollar loan described in paragraph (e)(5)(iii)(A)(*1*) of this section is based on the period from the date the loan is made until the loan's stated maturity date. However, if a split-dollar loan described in paragraph (e)(5)(iii)(A)(*1*) of this section does not have a stated maturity date, the term of the loan is presumed to be seven years.

(D) *Retirement and reissuance of loan.* If a split-dollar loan described in paragraph (e)(5)(iii)(A)(*1*) of this section remains outstanding longer than the term determined under paragraph (e)(5)(iii)(C) of this section because of the continued performance of substantial services, the split-dollar loan is treated as retired and reissued as a split-dollar demand loan at that time for the loan's adjusted issue price on that date. The loan is retested at that time to determine whether the loan provides for sufficient interest.

(iv) *Gift split-dollar term loans*—(A) *Applicability.* This paragraph (e)(5)(iv) applies to gift split-dollar term loans.

(B) *Treatment of loan.* A split-dollar loan described in paragraph (e)(5)(iv)(A) of this section is tested under paragraph (e)(4)(ii) of this section to determine if the loan provides for sufficient interest. If the loan provides for sufficient interest, then section 7872 does not apply to the loan and the interest on the loan is taken into account under paragraph (f) of this section. If the loan does not provide for sufficient interest, then section 7872 applies to the loan and the loan is treated as a below-market demand loan subject to paragraph (e)(3)(iii) of this section. For each year that the loan is outstanding, however, the AFR used in the determination of forgone interest under paragraph (e)(3)(iii) of this section is not the blended annual rate but rather is the AFR (based on annual compounding) appropriate for the loan's term for the month in which the loan is made. See

paragraph (e)(5)(iv)(C) of this section to determine the loan's term.

(C) *Term of loan.* For purposes of paragraph (e)(5)(iv)(B) of this section, the term of a gift split-dollar term loan is the term determined under paragraph (e)(4)(iii) of this section.

(D) *Limited application for gift split-dollar term loans.* The rules of paragraph (e)(5)(iv)(B) of this section apply to a gift split-dollar term loan only for Federal income tax purposes. For purposes of chapter 12 of the Internal Revenue Code (relating to the gift tax), gift below-market split-dollar term loans are treated as term loans under section 7872(b) and paragraph (e)(4) of this section. See section 7872(d)(2).

(v) *Split-dollar loans payable on the later of a term certain and another specified date*—(A) *Applicability.* This paragraph (e)(5)(v) applies to any split-dollar term loan payable upon the later of a term certain or—

(*1*) The death of an individual; or

(*2*) For a loan described in paragraph (e)(5)(iii)(A)(*1*) of this section, the date on which the condition to perform substantial future services by an individual ends.

(B) *Treatment of loan*—(1) *In general.* A split-dollar loan described in paragraph (e)(5)(v)(A) of this section is a split-dollar term loan, subject to paragraph (e)(4) of this section.

(*2*) *Term of the loan.* The term of a split-dollar loan described in paragraph (e)(5)(v)(A) of this section is the term certain.

(*3*) *Appropriate AFR.* The appropriate AFR for a split-dollar loan described in paragraph (e)(5)(v)(A) of this section is based on a term of the longer of the term certain or the loan's expected term as determined under either paragraph (e)(5)(ii) or (iii) of this section, whichever is applicable.

(C) *Retirement and reissuance.* If a split-dollar loan described in paragraph (e)(5)(v)(A) of this section remains outstanding longer than the term certain, the split-dollar loan is treated as retired and reissued at the end of the term certain for the loan's adjusted issue price on that date. The reissued loan is subject to paragraph (e)(5)(ii) or (iii) of this section, whichever is applicable. However, the loan is not retested at that time to determine whether the loan provides for sufficient interest. For purposes of paragraph (e)(3)(iii) of this section, the appropriate AFR for the reissued loan is the AFR determined under paragraph (e)(5)(v)(B)(3) of this section on the day the loan was originally made.

(vi) *Example.* The provisions of this paragraph (e)(5) are illustrated by the following example:

Example. (i) On January 1, 2009, Corporation *Y* and Shareholder *B,* a 65 year-old male, enter into a split-dollar life insurance arrangement under which *B* is named as the policy owner. On January 1, 2009, *Y* makes a $100,000 premium payment, repayable, without interest, from the death benefits of the underlying contract upon *B*'s death. The premium payment is a split-dollar term loan. Repayment of the premium payment is fully recourse to *B.* Assume the long-term AFR (based on annual compounding) at the time of the loan is 7 percent. Both *Y* and *B* use the calendar year as their taxable years.

(ii) Based on Table 1 in § 1.72–9, the expected term of the loan is 15 years. Under paragraph (e)(5)(ii)(C) of this section, the long-term AFR (based on annual compounding) is the appropriate test rate. Based on a 15-year term and a discount rate of 7 percent, compounded annually (the long-term AFR), the present value of the payments under the loan is $36,244.60, determined as follows: $100,000/[1+(0.07/1)]^{15}. Under paragraph (e)(5)(ii)(B) of this section, this loan is a below-market split-dollar term loan because the imputed loan amount of $36,244.60 (the present value of the amount required to be repaid to *Y*) is less than the amount loaned ($100,000).

(iii) Under paragraph (e)(5)(ii)(B) of this section, the amount of forgone interest for 2009 (and each subsequent full calendar year that the loan remains outstanding) is $7,000, which is the amount of interest that would have been payable on the loan for the calendar year if interest accrued on the loan's adjusted issue price ($100,000) at the long-term AFR (7 percent, compounded annually). Under section 7872 and paragraph (e)(1)(i) of this section, on December 31, 2009, *Y* is treated as making a section 301 distribution to *B* of $7,000. In addition, *Y* has $7,000 of imputed interest income for 2009.

(f) *Treatment of stated interest and OID for split-dollar loans*—(1) *In general.* If a split-dollar loan provides for stated interest or OID, the loan is subject to this paragraph (f), regardless of whether the split-dollar loan has sufficient interest. Except as provided in paragraphs (f)(2), (g), and (j) of this section, split-dollar loans are subject to the same Internal Revenue Code and regulatory provisions for stated interest and OID as other loans. For example, the lender of a split-dollar loan that provides for stated interest must account for any qualified stated interest (as defined in § 1.1273–1(c)) under its regular method of accounting (for example, an accrual method or the cash receipts and disbursements method). See § 1.446–2 to determine the amount of qualified stated interest that accrues during an accrual period. In addition, the lender must account under § 1.1272–1 for any OID on a split-dollar loan. See paragraph (h) of this section for a subsequent waiver, cancellation, or forgiveness of stated interest on a split-dollar loan.

(2) *Term, payment schedule, and yield.* The term of a split-dollar term loan determined under paragraph (e)(4)(iii) of this section (other than paragraph (e)(4)(iii)(C) of this section) applies to determine the split-dollar loan's term, payment schedule, and yield for all purposes of this section.

(g) *Certain variable rates of interest*—(1) *In general.* This paragraph (g) provides rules for a split-dollar loan that provides for certain variable rates of interest. If this paragraph (g) does not apply to a variable rate split-dollar loan, the loan is subject to the rules for split-dollar loans providing for one or more contingent payments in paragraph (j) of this section.

(2) *Applicability*—(i) *In general.* Except as provided in paragraph (g)(2)(ii) of this section, this paragraph (g) applies to a split-dollar loan that is a variable rate debt instrument (within the meaning of § 1.1275–5) and that provides for stated interest at a qualified floating rate (or rates).

(ii) *Interest rate restrictions.* This paragraph (g) does not apply to a split-dollar loan if, as a result of interest rate restrictions (such as an interest rate cap), the expected yield of the loan taking the restrictions into account is significantly less than the expected yield of the loan without regard to the restrictions. Conversely, if reasonably symmetric interest rate caps and floors or reasonably symmetric governors are fixed throughout the term of the loan, these restrictions generally do not prevent this paragraph (g) from applying to the loan.

(3) *Testing for sufficient interest*—(i) *Demand loan.* For purposes of paragraph (e)(3)(ii) of this section (regarding testing a split-dollar demand loan for sufficient interest), a split-dollar demand loan is treated as if it provided for a fixed rate of interest for each accrual period to which a qualified floating rate applies. The projected fixed rate for each accrual period is the value of the qualified floating rate as of the beginning of the calendar year that contains the last day of the accrual period.

(ii) *Term loan.* For purposes of paragraph (e)(4)(ii) of this section (regarding testing a split-dollar term loan for sufficient interest), a split-dollar term loan subject to this paragraph (g) is treated as if it provided for a fixed rate of interest for each accrual period to which a qualified floating rate applies. The projected fixed rate for each accrual period is the value of the qualified

floating rate on the date the split-dollar term loan is made. The term of a split-dollar loan that is subject to this paragraph (g)(3)(ii) is determined using the rules in § 1.1274–4(c)(2). For example, if the loan provides for interest at a qualified floating rate that adjusts at varying intervals, the term of the loan is determined by reference to the longest interval between interest adjustment dates. See paragraph (e)(5) of this section for special rules relating to certain split-dollar term loans, such as a split-dollar term loan payable not later than the death of an individual.

(4) *Interest accruals and imputed transfers.* For purposes of paragraphs (e) and (f) of this section, the projected fixed rate or rates determined under paragraph (g)(3) of this section are used for purposes of determining the accrual of interest each period and the amount of any imputed transfers. Appropriate adjustments are made to the interest accruals and any imputed transfers to take into account any difference between the projected fixed rate and the actual rate.

(5) *Example.* The provisions of this paragraph (g) are illustrated by the following example:

Example. (i) On January 1, 2010, Employer *V* and Employee *F* enter into a split-dollar life insurance arrangement under which *F* is named as the policy owner. On January 1, 2010, *V* makes a $100,000 premium payment, repayable in 15 years. The premium payment is a split-dollar term loan. Under the arrangement between the parties, interest is payable on the split-dollar loan each year on January 1, starting January 1, 2011, at a rate equal to the value of 1-year LIBOR as of the payment date. The short-term AFR (based on annual compounding) at the time of the loan is 7 percent. Repayment of both the premium payment and the interest due thereon is nonrecourse to *F*. However, the parties made a representation under paragraph (d)(2) of this section. Assume that the value of 1-year LIBOR on January 1, 2010, is 8 percent, compounded annually.

(ii) The loan is subject to this paragraph (g) because the loan is a variable rate debt instrument that bears interest at a qualified floating rate. Because the interest rate is reset each year, under paragraph (g)(3)(ii) of this section, the short-term AFR (based on annual compounding) is the appropriate test rate used to determine whether the loan provides for sufficient interest. Moreover, under paragraph (g)(3)(ii) of this section, to determine whether the loan provides for sufficient interest, the loan is treated as if it provided for a fixed rate of interest equal to 8 percent, compounded annually. Based on a discount rate of 7 percent, compounded annually (the short-term AFR), the present value of the payments under the loan is $109,107.91. The loan provides for sufficient interest because the loan's imputed loan amount of $109,107.91 (the present value of the payments) is more than the amount loaned of $100,000. Therefore, the loan is not a below-market split-dollar term loan, and interest on the loan is taken into account under paragraph (f) of this section.

(h) *Adjustments for interest paid at less than the stated rate*—(1) *In general.* To the extent required by this paragraph (h), if accrued but unpaid interest on a split-dollar loan is subsequently waived, cancelled, or forgiven by the lender, the waiver, cancellation, or forgiveness is treated as if, on that date, the interest had in fact been paid to the lender and then retransferred by the lender to the borrower. To determine the characterization of any retransferred amount, see paragraph (e)(1)(i) of this section. For purposes of this paragraph (h), the amount of interest deemed transferred and retransferred pursuant to this paragraph (h) is determined under paragraph (h)(2) or (3) of this section. See § 1.61–22(b)(6) for the treatment of amounts other than interest on a split-dollar loan that are waived, cancelled, or forgiven by the lender. For purposes of this paragraph (h), a split-dollar term loan described in paragraph (e)(5) of this section (for example, a split-dollar term loan payable not later than the death of an individual) is subject to the rules of paragraph (h)(3) of this section.

(2) *Split-dollar term loans.* In the case of a split-dollar term loan, the amount of interest deemed transferred and retransferred for purposes of paragraph (h)(1) of this section is determined as follows:

(i) If the loan's stated rate is less than or equal to the appropriate AFR (the AFR used to test the loan for sufficient interest under paragraph (e) of this section), the amount of interest deemed transferred and retransferred pursuant to this paragraph (h) is the excess of the amount of interest payable at the stated rate over the interest actually paid.

(ii) If the loan's stated rate is greater than the appropriate AFR (the AFR used to test the loan for sufficient interest under paragraph (e) of this section), the amount of interest deemed transferred and retransferred pursuant to this paragraph (h) is the excess, if any, of the amount of interest payable at the AFR over the interest actually paid.

(3) *Split-dollar demand loans.* In the case of a split-dollar demand loan, the amount of interest deemed transferred and retransferred for purposes of paragraph (h)(1) of this section is equal to the aggregate of—

(i) For each year that the split-dollar demand loan was outstanding in which the loan was a below-market split-dollar demand loan, the excess of the amount of interest payable at the stated rate over the interest actually paid allocable to that year; plus

(ii) For each year that the split-dollar demand loan was outstanding in which the loan was not a below-market split-dollar demand loan, the excess, if any, of the amount of interest payable at the appropriate AFR used for purposes of imputation for that year over the interest actually paid allocable to that year.

(4) *Examples.* The provisions of this paragraph (h) are illustrated by the following examples:

Example 1. (i) On January 1, 2009, Employer *Y* and Employee *B* entered into a split-dollar life insurance arrangement under which *B* is named as the policy owner. On January 1, 2009, *Y* made a $100,000 premium payment, repayable on December 31, 2011, with interest of 5 percent, compounded annually. The premium payment is a split-dollar term loan. Assume the short-term AFR (based on annual compounding) at the time the loan was made was 5 percent. Repayment of both the premium payment and the interest due thereon was fully recourse to *B.* On December 31, 2011, *Y* is repaid $100,000 but *Y* waives the remainder due on the loan ($15,762.50). Both *Y* and *B* use the calendar year as their taxable years.

(ii) When the split-dollar loan was made, the loan was not a below-market loan under paragraph (e)(4)(ii) of this section. Under paragraph (f) of this section, *Y* was required to accrue compound interest of 5 percent each year the loan remained outstanding. *B,* however, was not entitled to any deduction for this interest under paragraph (c) of this section.

(iii) Under paragraph (h)(2) of this section, the waived amount is treated as if, on December 31, 2011, it had in fact been paid to *Y* and was then retransferred by *Y* to *B.* The amount deemed transferred to *Y* and retransferred to *B* equals the excess of the amount of interest payable at the stated rate ($15,762.50) over the interest actually paid ($0), or $15,762.50. Because of the employment relationship between *Y* and *B,* this retransferred amount is treated as compensation paid by *Y* to *B.*

Example 2. (i) On January 1, 2009, Employer *Y* and Employee *B* entered into a split-dollar life insurance arrangement under which B is named as the policy owner. On January 1, 2009, *Y* made a $100,000 premium payment, repayable on the demand of *Y,* with interest of 7 percent, compounded annually. The premium payment is a split-dollar demand loan. Assume the blended annual rate (based on annual compounding) in 2009 was 5 percent and in 2010 was 6 percent. Repayment of both the premium payment and the interest due thereon was fully recourse to *B.* On December 31, 2010, *Y* demands repayment and is repaid its $100,000 premium payment in full; however, *Y* waives all interest due on the loan. Both Y and B use the calendar year as their taxable years.

(ii) For each year that the split-dollar demand loan was outstanding, the loan was not a below-market loan under paragraph (e)(3)(ii) of this section. Under paragraph (f)

of this section, *Y* was required to accrue compound interest of 7 percent each year the loan remained outstanding. *B,* however, was not entitled to any deduction for this interest under paragraph (c) of this section.

(iii) Under paragraph (h)(1)(i) of this section, a portion of the waived interest may be treated as if, on December 31, 2010, it had in fact been paid to *Y* and was then retransferred by *Y* to *B.* The amount of interest deemed transferred to *Y* and retransferred to *B* equals the excess, if any, of the amount of interest payable at the blended annual rate for each year the loan is outstanding over the interest actually paid with respect to that year. For 2009, the interest payable at the blended annual rate is $5,000 ($100,000 × 0.05). For 2010, the interest payable at the blended annual rate is $6,000 ($100,000 × 0.06). Therefore, the amount of interest deemed transferred to *Y* and retransferred to B equals $11,000. Because of the employment relationship between *Y* and *B,* this retransferred amount is treated as compensation paid by *Y* to *B.*

(i) [Reserved]

(j) *Split-dollar loans that provide for contingent payments*—(1) *In general.* Except as provided in paragraph (j)(2) of this section, this paragraph (j) provides rules for a split-dollar loan that provides for one or more contingent payments. This paragraph (j), rather than § 1.1275–4, applies to split-dollar loans that provide for one or more contingent payments.

(2) *Exceptions*—(i) *Certain contingencies.* For purposes of this section, a split-dollar loan does not provide for contingent payments merely because—

(A) The loan provides for options described in paragraph (e)(4)(iii)(B) of this section (for example, certain call options, put options, and options to extend); or

(B) The loan is described in paragraph (e)(5) of this section (relating to certain split-dollar term loans, such as a split-dollar term loan payable not later than the death of an individual).

(ii) *Insolvency and default.* For purposes of this section, a payment is not contingent merely because of the possibility of impairment by insolvency, default, or similar circumstances. However, if any payment on a split-dollar loan is nonrecourse to the borrower, the payment is a contingent payment for purposes of this paragraph (j) unless the parties to the arrangement make the written representation provided for in paragraph (d)(2) of this section.

(iii) *Remote and incidental contingencies.* For purposes of this section, a payment is not a contingent payment merely because of a contingency that, as of the date the split-dollar loan is made, is either remote or incidental (within the meaning of § 1.1275–2(h)).

(iv) *Exceptions for certain split-dollar loans.* This paragraph (j) does not apply to a split-dollar loan described in § 1.1272–1(d) (certain debt instruments that provide for a fixed yield) or a split-dollar loan described in paragraph (g) of this section (relating to split-dollar loans providing for certain variable rates of interest).

(3) *Contingent split-dollar method*—(i) *In general.* If a split-dollar loan provides for one or more contingent payments, then the parties account for the loan under the contingent split-dollar method. In general, except as provided in this paragraph (j), this method is the same as the noncontingent bond method described in § 1.1275–4(b).

(ii) *Projected payment schedule*—(A) *Determination of schedule.* No comparable yield is required to be determined. The projected payment schedule for the loan includes all noncontingent payments and a projected payment for each contingent payment. The projected payment for a contingent payment is the lowest possible value of the payment. The projected payment schedule, however, must produce a yield that is not less than zero. If the projected payment schedule produces a negative yield, the schedule must be reasonably adjusted to produce a yield of zero.

(B) *Split-dollar term loans payable upon the death of an individual.* If a split-dollar term loan described in paragraph (e)(5)(ii)(A) or (v)(A)(*1*) of this section provides for one or more contingent payments, the projected payment schedule is determined based on the term of the loan as determined under paragraph (e)(5)(ii)(C) or (v)(B)(*2*) of this section, whichever is applicable.

(C) *Certain split-dollar term loans conditioned on the future performance of substantial services by an individual.* If a split-dollar term loan described in paragraph (e)(5)(iii)(A)(*1*) or (v)(A)(*2*) of this section provides for one or more contingent payments, the projected payment schedule is determined based on the term of the loan as determined under paragraph (e)(5)(iii)(C) or (v)(B)(*2*) of this section, whichever is applicable.

(D) *Demand loans.* If a split-dollar demand loan provides for one or more contingent payments, the projected payment schedule is determined based on a reasonable assumption as to when the lender will demand repayment.

(E) *Borrower/lender consistency.* Contrary to § 1.1275–4(b)(4)(iv), the lender rather than the borrower is required to determine the projected payment schedule and to provide the schedule to the borrower and to any indirect participant as described in paragraph (e)(2) of this section. The lender's projected payment schedule is used by the lender, the borrower, and any indirect participant to compute interest accruals and adjustments.

(iii) *Negative adjustments.* If the issuer of a split-dollar loan is not allowed to deduct interest or OID (for example, because of section 163(h) or 264), then the issuer is not required to include in income any negative adjustment carryforward determined under § 1.1275–4(b)(6)(iii)(C) on the loan, except to the extent that at maturity the total payments made over the life of the loan are less than the issue price of the loan.

(4) *Application of section 7872*—(i) *Determination of below-market status.* The yield based on the projected payment schedule determined under paragraph (j)(3) of this section is used to determine whether the loan is a below-market split-dollar loan under paragraph (e) of this section.

(ii) *Adjustment upon the resolution of a contingent payment.* To the extent that interest has accrued under section 7872 on a split-dollar loan and the interest would not have accrued under this paragraph (j) in the absence of section 7872, the lender is not required to recognize income under § 1.1275–4(b) for a positive adjustment and the borrower is not treated as having interest expense for a positive adjustment. To the same extent, there is a reversal of the tax consequences imposed under paragraph (e) of this section for the prior imputed transfer from the lender to the borrower. This reversal is taken into account in determining adjusted gross income.

(5) *Examples.* The following examples illustrate the rules of this paragraph (j). For purposes of this paragraph (j)(5), assume that the contingent payments are neither remote nor incidental. The examples are as follows:

Example 1. (i) On January 1, 2010, Employer *T* and Employee *G* enter into a split-dollar life insurance arrangement under which *G* is named as the policy owner. On January 1, 2010, *T* makes a $100,000 premium payment. On December 31, 2013, *T* will be repaid an amount equal to the premium payment plus an amount based on the increase, if any, in the price of a specified commodity for the period the loan is outstanding. The premium payment is a split-dollar term loan. Repayment of both the premium payment and the interest due thereon is recourse to *G.* Assume that the appropriate AFR for this loan, based on annual compounding, is 7 percent. Both *T* and *G* use the calendar year as their taxable years.

(ii) Under this paragraph (j), the split-dollar loan between *T* and *G* provides for a

contingent payment. Therefore, the loan is subject to the contingent split-dollar method. Under this method, the projected payment schedule for the loan provides for a noncontingent payment of $100,000 and a projected payment of $0 for the contingent payment (because it is the lowest possible value of the payment) on December 31, 2013.

(iii) Based on the projected payment schedule and a discount rate of 7 percent, compounded annually (the appropriate AFR), the present value of the payments under the loan is $76,289.52. Under paragraphs (e)(4) and (j)(4)(i) of this section, the loan does not provide for sufficient interest because the loan's imputed loan amount of $76,289.52 (the present value of the payments) is less than the amount loaned of $100,000. Therefore, the loan is a below-market split-dollar loan and the loan is recharacterized as consisting of two portions: an imputed loan amount of $76,289.52 and an imputed transfer of $23,710.48 (amount loaned of $100,000 minus the imputed loan amount of $76,289.52).

(iv) In accordance with section 7872(b)(1) and paragraph (e)(4)(iv) of this section, on the date the loan is made, *T* is treated as transferring to *G* $23,710.48 (the imputed transfer) as compensation. In addition, *T* must take into account as OID an amount equal to the imputed transfer. See § 1.1272–1 for the treatment of OID.

Example 2. (i) Assume, in addition to the facts in *Example 1*, that on December 31, 2013, *T* receives $115,000 (its premium payment of $100,000 plus $15,000).

(ii) Under the contingent split-dollar method, when the loan is repaid, there is a $15,000 positive adjustment ($15,000 actual payment minus $0 projected payment). Under paragraph (j)(4) of this section, because *T* accrued imputed interest under section 7872 on this split-dollar loan to *G* and this interest would not have accrued in the absence of section 7872, *T* is not required to include the positive adjustment in income, and *G* is not treated as having interest expense for the positive adjustment. To the same extent, *T* must include in income, and *G* is entitled to deduct, $15,000 to reverse their respective prior tax consequences imposed under paragraph (e) of this section (*T*'s prior deduction for imputed compensation deemed paid to *G* and *G*'s prior inclusion of this amount). *G* takes the reversal into account in determining adjusted gross income. That is, the $15,000 is an ''above-the-line'' deduction, whether or not *G* itemizes deductions.

Example 3. (i) Assume the same facts as in *Example 2*, except that on December 31, 2013, *T* receives $127,000 (its premium payment of $100,000 plus $27,000).

(ii) Under the contingent split-dollar method, when the loan is repaid, there is a $27,000 positive adjustment ($27,000 actual payment minus $0 projected payment). Under paragraph (j)(4) of this section, because *T* accrued imputed interest of $23,710.48 under section 7872 on this split-dollar loan to *G* and this interest would not have accrued in the absence of section 7872, *T* is not required to include $23,710.48 of the positive adjustment in income, and *G* is not treated as having interest expense for the positive adjustment. To the same extent, in 2013, *T* must include in income, and *G* is entitled to deduct, $23,710.48 to reverse their respective prior tax consequences imposed under paragraph (e) of this section (*T*'s prior deduction for imputed compensation deemed paid to *G* and *G*'s prior inclusion of this amount). *G* and *T* take these reversals into account in determining adjusted gross income. Under the contingent split-dollar method, *T* must include in income $3,289.52 upon resolution of the contingency ($27,000 positive adjustment minus $23,710.48).

(k) *Payment ordering rule.* For purposes of this section, a payment made by the borrower pursuant to a split-dollar life insurance arrangement is applied to all direct and indirect split-dollar loans in the following order—

(1) A payment of interest to the extent of accrued but unpaid interest (including any OID) on all outstanding split-dollar loans in the order the interest accrued;

(2) A payment of principal on the outstanding split-dollar loans in the order in which the loans were made;

(3) A payment of amounts previously paid by a non-owner pursuant to a split-dollar life insurance arrangement that were not reasonably expected to be repaid by the owner; and

(4) Any other payment with respect to a split-dollar life insurance arrangement, other than a payment taken into account under paragraphs (k)(1), (2), and (3) of this section.

(l) [Reserved]

(m) *Repayments received by a lender.* Any amount received by a lender under a life insurance contract that is part of a split-dollar life insurance arrangement is treated as though the amount had been paid to the borrower and then paid by the borrower to the lender. Any amount treated as received by the borrower under this paragraph (m) is subject to other provisions of the Internal Revenue Code as applicable (for example, sections 72 and 101(a)). The lender must take the amount into account as a payment received with respect to a split-dollar loan, in accordance with paragraph (k) of this section. No amount received by a lender with respect to a split-dollar loan is treated as an amount received by reason of the death of the insured.

(n) *Effective date*—(1) *General rule.* This section applies to any split-dollar life insurance arrangement entered into after the date the final regulations are published in the **Federal Register**.

(2) *Early reliance.* Taxpayers may rely on this section for the treatment of any split-dollar life insurance arrangement entered into on or before the date described in paragraph (n)(1) of this section, provided that all taxpayers who are parties to a split-dollar loan described in paragraph (b)(1) of this section treat the arrangement consistently under this section.

(3) *Modified arrangements treated as new arrangements.* An arrangement entered into on or before the date set forth in paragraph (n)(1) of this section that is materially modified after the date set forth in paragraph (n)(1) of this section is treated as a new arrangement entered into on the date of the modification.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 10. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 11. In § 31.3121(a)–1, paragraph (k) is added to read as follows:

§ 31.3121(a)–1 Wages.

* * * * *

(k) *Split-dollar life insurance arrangements.* Except as otherwise provided under section 3121(v), see § 1.61–22 of this chapter for rules relating to the treatment of split-dollar life insurance arrangements.

Par. 12. In § 31.3231(e)–1, paragraph (a)(6) is added to read as follows:

§ 31.3231(e)–1 Compensation.

(a) * * *

(6) *Split-dollar life insurance arrangements.* See § 1.61–22 of this chapter for rules relating to the treatment of split-dollar life insurance arrangements.

* * * * *

Par. 13. In § 31.3306(b)–1, paragraph (l) is added to read as follows:

§ 31.3306(b)–1 Wages.

* * * * *

(l) *Split-dollar life insurance arrangements.* Except as otherwise provided under section 3306(r), see § 1.61–22 of this chapter for rules relating to the treatment of split-dollar life insurance arrangements.

Par. 14. In § 31.3401(a)–1, paragraph (b)(15) is added to read as follows:

§ 31.3401(a)–1 Wages.

* * * * *

(b) * * *

(15) *Split-dollar life insurance arrangements.* See § 1.61–22 of this chapter for rules relating to the

treatment of split-dollar life insurance arrangements.

* * * * *

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 02–17042 Filed 7–3–02; 9:53 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 947]

RIN: 1512–AC62

Establishment of the Oak Knoll District Viticultural Area (2002R–046P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms is proposing the establishment of the ''Oak Knoll District'' viticultural area in Napa County, California. This action is in response to a petition submitted by the Oak Knoll District Committee.

DATES: Written comments must be received by September 9, 2002.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, PO Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 947). See the ''Public Participation'' section of this notice for alternative means of commenting.

Copies of the petition, the proposed regulation, the appropriate maps, and any written comments received will be available for public inspection by appointment during normal business hours at the ATF Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–7890.

FOR FURTHER INFORMATION CONTACT: Joanne Brady, Specialist, Regulations Division (Philadelphia, PA), Bureau of Alcohol, Tobacco and Firearms, The Curtis Center, Suite 875, Independence Square West, Philadelphia, PA 19106; telephone 215–597–5288 or e-mail *JCBrady@phila.atf.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of deceptive information on such labels. The FAA Act also authorizes the Bureau of Alcohol, Tobacco and Firearms (ATF) to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. A list of approved viticultural areas is contained in 27 CFR part 9, American Viticultural Areas.

Section 4.25a(e)(1) of title 27 CFR defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Oak Knoll District Petition

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition from the Oak Knoll District Committee proposing a new American viticultural area to be called ''Oak Knoll District.'' As part of its petition, the Committee also submitted reports from historian Charles L. Sullivan and Dr. Deborah L. Elliott-Fisk, a professor at the University of California, Davis, in support of its claims.

The proposed viticultural area is located in the southern end of the Napa Valley in Napa County, California. It includes approximately 9,940 acres, of which 4,040 are plantable to vines. The proposed area would abut the Mt. Veeder viticultural area to the west and the Yountville viticultural area to the north, and would lie entirely within the Napa Valley viticultural area.

Evidence That the Name of the Area is Locally or Nationally Known

According to the Oak Knoll District Committee, the name of the proposed viticultural area is based on both present and historical evidence. The proposed area is the site of the historic Oak Knoll Ranch, which dates from the early days of American settlement in the Napa Valley. The petitioner also provided other examples of the use of the name ''Oak Knoll District'' or ''Oak Knoll'' within the proposed area: the area's former school district was known as the Oak Knoll District, a historic train station was called Oak Knoll Station, and the Oak Knoll Inn and Oak Knoll Cellars vineyard were established within the proposed area.

According to the report submitted by Mr. Charles L. Sullivan, Joseph W. Osborne brought the first fine vinifera varieties to the Napa Valley. His ranch, the Oak Knoll Ranch, became famous when it was named California's best-cultivated farm by the State Agricultural Society in 1854 and 1856. Mr. Sullivan also notes that, according to a local newspaper's extensive article on the Oak Knoll estate in 1886, it was called ''the richest gem in California's golden crown'' and ''one of the fairest spots in California's loveliest valley.''

Mr. Sullivan's report noted that in 1886, the Eshcol Ranch Winery was established on what may have been the Oak Knoll Ranch property. The petition contends that the purchase of the Eshcol estate by the Trefethen family in 1968, and the establishment of Trefethen Vineyards, began to transform Oak Knoll into a world-class wine grape growing area.

The petitioner also supplied evidence in the form of articles from various publications and trade magazines that make reference to the ''Oak Knoll District.'' An excerpt from the Lifestyle section of the August/September 1999 issue of ''Wine News'' magazine states that the Trefethens bought the 600-acre walnut, wheat, grape, and prune ranch in the ''Oak Knoll District of Napa'' in 1968.

An article from the May 1999 ''Inside Napa Valley, a Visitor's Guide,'' states that the ''Yountville, Stag's Leap and Oak Knoll districts near Yountville contain some of the most renown[ed] wineries of Napa Valley.'' An article from the July 16, 1997, Los Angeles Times states, ''Trefethen's 600 acres of vines are in the (not yet legally

designated) Oak Knoll District at the cool southern end of Napa Valley, not far from the city of Napa. Over the years, Trefethen's Chardonnays have consistently displayed a distinctive Oak Knoll character.'' The petition also notes that Oak Knoll Avenue traverses the proposed viticultural area from Highway 29 on its western side to the Silverado Trail on its eastern side.

The petitioner has requested the name ''Oak Knoll District'' because the petitioner believes it will identify the proposed area more clearly. The petitioner also believes it eliminates any possible confusion with a winery in Oregon named Oak Knoll. Further, the petitioner noted that just as ''District'' is used as part of the Stags Leap District and Spring Mountain District viticultural areas within the Napa Valley, the full name indicates an area rather than the name of an existing winery.

Historical or Current Evidence That the Boundaries of the Proposed Viticultural Area Are As Specified in the Application

In his report, Mr. Sullivan states the northern boundary of the proposed Oak Knoll District of Napa Valley is the same as the southern boundary of the Yountville viticultural area, and that the Mt. Veeder viticultural area boundary line to Redwood Road defines part of its western boundary. In her climate and soil report, Professor Deborah L. Elliott-Fisk states the proposed southern boundary of the Oak Knoll District approximates the southern edge of the Dry Creek alluvial fan. She concludes that the most logical west-east line to follow for this boundary is Redwood Road, which becomes Trancas Road to the east of Highway 29. Professor Elliott-Fisk also states that the proposed area's logical eastern boundary is the Silverado Trail.

Evidence Relating to the Geographical Features Which Distinguish Viticultural Features of the Proposed Area From Surrounding Areas

Climate

Professor Elliott-Fisk states that, outside of the Los Carneros viticultural area, the proposed Oak Knoll District is one of the coolest vineyard regions in the Napa Valley viticultural area, with a long, cool growing season for grapevines of approximately eight months.

According to Professor Elliott-Fisk, the Amerine and Winkler classification system rates this area as a Region I to a cool Region II climate in any given year. She notes the low degree day totals have favored the planting of Chardonnay and, to some extent, Pinot Noir as two cooler climate varietals; yet Cabernet Sauvignon and Merlot also do exceptionally well with the proper viticultural management.

Professor Elliott-Fisk also notes that the uniform climate across the proposed area is due to the broad, flat valley floor topography. Along the western and eastern edges of the proposed area, small pockets of an even cooler climate are found in the immediate Napa River floodplain and in the small, first-order stream tributaries on the lower foothill slopes.

Professor Elliott-Fisk also states that the proximity of this area to San Pablo Bay results in a maritime influence, with cool breezes coming off the bay. Coastal fog is also common in the mornings, especially in the summer. The region is classified as sub-humid and receives approximately 28 to 30 inches of precipitation in a normal year. Annual precipitation can reach 60 inches in an abnormally wet year.

Soils

According to the reports and studies cited by Dr. Elliott-Fisk, the soils in the proposed Oak Knoll District are ''more uniform than in other approved Napa Valley viticultural areas, due principally to the dominance of the large Dry Creek alluvial fan.'' Dr. Elliott-Fisk notes that across the large Dry Creek fan, soils include the fine, gravelly clay loam, silt loam, and loam soils. Dr. Elliott-Fisk states in her report that the proposed southern boundary approximates the southern edge of the Dry Creek alluvial fan. Alluvial deposits from Dry Creek and the Napa River have largely buried the Diablo clays and Haire clay loams within the proposed Oak Knoll District of Napa Valley viticultural area. This contrasts with the area to the south of the proposed viticultural area, Napa City and Los Carneros, where Diablo and Haire soils are common at the surface, as are Yolo and Clear Lake clay soils. The Yolo soils are less well drained, with higher percentages of organic matter, both of which promote vine vigor.

The bedrock, seen in the hillsides along the western edge of the proposed Oak Knoll District, is diverse and primarily volcanic in origin. The West Napa Fault Zone runs along the base of these hills. Serpentine, sandstone, and shale are occasionally found on the hillsides. Towards the toeslope, unusual clay-rich soils are found in many colors, including green, red, yellow, gray and black.

Proposed Boundaries

According to the petitioner, two United States Geological Survey Quadrangle maps (7.5 Minute Series) show the boundaries of the proposed Oak Knoll District viticultural area. The list of maps and the area's proposed boundaries are described in the text of the proposed rule shown below.

Public Participation

Comments Sought

ATF requests comments from all interested persons. ATF is particularly interested in comments concerning the appropriateness of the name ''Oak Knoll District'' for this proposed viticultural area. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Submitting Comments

By mail: Written comments should be mailed to ATF at the address listed in the **ADDRESSES** section above.

By fax: Comments may be submitted by facsimile transmission to 215–597–7003, provided the comments:

(1) Are legible;

(2) Are 8½″ × 11″ in size;

(3) Contain a written signature; and

(4) Are three pages or less in length.

This limitation is necessary to assure reasonable public access to the equipment. Comments sent by fax in excess of three pages will not be accepted. Receipt of fax transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

By e-mail: Comments may be submitted by e-mail to *nprm@atfhq/treas.gov.* E-mail comments must:

(1) Contain your name, mailing address, and e-mail address;

(2) Reference this notice number; and

(3) Be legible when printed.

We will not acknowledge the receipt of e-mail. We will treat comments submitted by e-mail as originals.

By on-line form: Comments may also be submitted using the comment form provided with the online copy of this

proposed rule on the ATF Internet web site at *http://www.atf.treas.gov.*

Public Hearing: Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request in writing to the Director within the 60-day comment period. The Director reserves the right to determine, however, in light of all circumstances, whether a public hearing will be held.

Reviewing Comments

Copies of the petition, the proposed regulation, the appropriate maps, and any written comments received will be available for public inspection by appointment at the ATF Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226. For an appointment, call 202–927–7890. To obtain copies of the comments (at 20 cents per page), contact the ATF librarian in writing at the address above.

For the convenience of the public, ATF will post comments received in response to this notice on the ATF web site. All comments posted on our web site will show the name of the commenter, but will have street addresses, telephone numbers and e-mail addresses removed. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the library or through FOIA requests, as noted above. To access online copies of the comments on this rulemaking, visit *http://www.atf.treas.gov/,* select ''Regulations,'' this notice, and then click on the ''view comments'' link.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Regulatory Flexibility Act

ATF certifies that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

ATF has determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Drafting Information

The principal author of this document is Joanne Brady, Regulations Division (Philadelphia), Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.161 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.161 Oak Knoll District

(a) *Name.* The name of the viticultural area described in this section is ''Oak Knoll District''.

(b) *Approved maps.* The appropriate maps for determining the boundary of the Oak Knoll District viticultural area are the following United States Geological Survey Quadrangle maps (7.5 Minute Series):

(1) Napa, California, 1951 (Photo revised 1980); and

(2) Yountville, California, 1951 (Photo revised 1968).

(c) *Boundaries.* The Oak Knoll District viticultural area is located entirely within Napa County, California. The boundaries of the Oak Knoll District viticultural area, using landmarks and points of reference found on the appropriate U.S.G.S. maps, are as follows:

(1) Beginning at the intersection of State Highway 29 and Trancas Road in the city of Napa on the Napa, CA quadrangle map;

(2) Proceed easterly along Trancas Road until it meets the Napa River;

(3) Proceed southerly along the Napa River approximately 3,500 feet to its confluence with Milliken Creek;

(4) Continue northerly up Milliken Creek to its intersection with Monticello Road;

(5) Then proceed westerly along Monticello Road to its intersection with Silverado Trail;

(6) Then proceed northerly and then northeasterly along Silverado Trail to its intersection with an unimproved dirt road located approximately 1,300 feet north of the intersection of Silverado Trail and Oak Knoll Avenue;

(7) From that point, proceed west in a straight line to the confluence of Dry Creek and the Napa River;

(8) Then proceed northwesterly along Dry Creek onto the Yountville map to the fork in the creek; then northwesterly along the north fork of Dry Creek to its intersection with the easterly end of the light-duty road labeled Ragatz Lane;

(9) Proceed southwesterly along Ragatz Lane to the west side of State Highway 29;

(10) Then proceed southerly along the west side of State Highway 29 for 982 feet to a point marking the easterly extension of the northern boundary of Napa County Assessor's parcel number 034–170–015 (marked in part by a fence along the southern edge of the orchard shown along the west side of State Highway 29 just above the bottom of the Yountville map);

(11) Then proceed westerly for 3,550 feet along the northern boundary of Napa County Assessor's parcel number 034–170–015 and its westerly extension to the dividing line between Range 5 West and Range 4 West on the Napa, CA map;

(12) Then proceed southwest in a straight line to the peak marked with an elevation of 564 feet; then south-southwest in a straight line to the peak marked with an elevation of 835 feet;

(13) Then proceed southwest in a straight line approximately 1,300 feet to the reservoir gauging station located on Dry Creek; then proceed west in a straight line across Dry Creek to the 400 foot contour line;

(14) Proceed along the 400-foot contour line in a generally southeasterly direction to its intersection with the line dividing Range 5 West and Range 4 West; then proceed south along that dividing line approximately 2,400 feet to the center of Redwood Road;

(15) Then proceed southerly and then easterly along Redwood Road to the point of beginning at Highway 29.

Signed: May 17, 2002.

Bradley A. Buckles,

Director.

[FR Doc. 02–16972 Filed 7–8–02; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[SW H–FRL–7241–7]

RIN 2050–AE88

Correction of Typographical Errors and Removal of Obsolete Language in Regulations on Reportable Quantities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to correct errors and remove obsolete or redundant language in regulations regarding notification requirements for releases of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). EPA has reviewed the CERCLA release reporting regulations and has identified several categories of errors, including: typographical errors in the table of CERCLA hazardous substances; definitions made legally obsolete because of changes in CERCLA's statutory provisions; and redundant or unnecessary information that could be removed from the regulations to simplify these regulations and reduce potential confusion.

In the Rules and Regulations section of today's **Federal Register**, EPA is approving this action as a direct final rule without a prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval of this action is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is anticipated in relation to this rule. If EPA receives adverse written comments on one or more distinct amendments, paragraphs, or sections of the direct final rule, EPA will withdraw the distinct amendments, paragraphs, or sections for which the adverse comment was received by publishing a timely withdrawal in the **Federal Register**. All adverse public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received before or on August 8, 2002.

ADDRESSES: *Comments:* Interested parties may submit an original and two copies of comments referencing docket number 102RQ-CORRECT to (1) if using regular U.S. Postal Service mail: Docket Coordinator, Superfund Docket Office, (Mail Code 5201G), U.S. Environmental Protection Agency Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or (2) if using special delivery such as overnight express service: Superfund Docket Office, Crystal Gateway One, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

It would also be helpful, although not mandatory, to include an electronic copy of your comments by diskette or Internet e-mail. For more information, see the ''Electronic Submission of Comments'' portion of the **SUPPLEMENTARY INFORMATION** section of EPA's direct final rule published in today's **Federal Register**.

Docket: Copies of public comments and other materials supporting EPA's decision to correct typographical errors and remove obsolete language from 40 CFR Part 302 may be examined at the U.S. EPA Superfund Docket Office, Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia 22202 [Docket Number 102RQ-CORRECT]. Docket hours are 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please call (703) 603–9232 for an appointment. You may copy a maximum of 100 pages from any regulatory docket at no charge; additional copies cost 15 cents per page. The Docket Office will mail copies of materials to you if you are located outside the Washington, DC metropolitan area.

FOR FURTHER INFORMATION: Contact Ms. Lynn Beasley of the Office of Emergency and Remedial Response (5204G), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by phone at (703) 603–9086, or by e-mail at *beasley.lynn@epa.gov.*

Dated: June 28, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–16873 Filed 7–8–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 02–12643]

RIN 2127–AC66

Federal Motor Vehicle Safety Standards: Air Brake Systems

ACTION: Termination of rulemaking.

SUMMARY: Brake blocks, also known as brake linings, are sacrificial components of brake systems. Composed of friction material, they are pressed against brake drums or brake rotors when a vehicle's brakes are activated. The composition and characteristics of brake blocks may vary considerably. This variation has a direct impact on brake performance and vehicle stopping distances. NHTSA received two petitions for rulemaking requesting issuance of standards for brake blocks, one from the American Trucking Associations (ATA) and the other from a private individual, Mr. Ralph Grabowsky. In March 1989, NHTSA granted the ATA petition and partially granted and partially denied Mr. Grabowsky's petition, agreeing to consider beginning rulemaking to develop a standard for marking, identifying and rating the effectiveness of heavy truck brake blocks. After granting these petitions, the agency initiated a number of studies to determine the feasibility of developing effectiveness ratings for heavy truck brake blocks. After examining the data developed from its research as well examining voluntary standards for heavy truck brake blocks, NHTSA has determined that it is unlikely that a suitable test procedure for comparing and rating brake blocks can be developed with currently available test equipment and procedures. Accordingly, the agency is terminating this rulemaking action.

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* Mr. Samuel Daniel Jr., Office of Crash Avoidance Standards, NPS–22, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, telephone (202) 366–4921, facsimile (202) 366–4329, electronic mail *sdaniel@nhtsa.dot.gov.*

For legal issues: Mr. Otto G. Matheke, III, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, telephone (202) 366–2992,

facsimile (202) 366–3820, electronic mail *omatheke@nhtsa.dot.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

1. ATA and Grabowsky Petitions

On April 6, 1987, a private individual, Mr. Ralph Grabowsky, petitioned for rulemaking to establish a brake block standard for motor vehicles and equipment, covering stability, friction, fade, proper identification and wear. On August 11, 1987, the American Trucking Associations (ATA) petitioned for a standard that would require rating the effectiveness (coefficient of friction) of all heavy truck brake blocks, and to have that rating permanently marked on the block. In March 1989, NHTSA granted the ATA petition and that portion of the Grabowsky petition concerning the friction rating and identification of brake blocks for heavy-duty vehicles. The agency indicated that it was planning research investigations in the subject area and that information derived from those investigations would be used to help determine whether a notice of proposed rulemaking would be issued. NHTSA explained its denial of the other portions of the Grabowsky petition in a notice published in the **Federal Register** on July 11, 1989 (54 FR 29067).

The ATA petition indicated that the trucking industry believed that voluntary brake block effectiveness rating standards then in place were inadequate and that a federal standard would improve heavy truck stability and braking performance. The Grabowsky petition stated that a new federal standard for brake blocks would reduce deaths, injuries and economic losses resulting from traffic accidents.

2. SAE Test Procedures

At the time the petitions were granted, NHTSA did not have any standard governing the rating and marking of brake blocks. Several voluntary standards were in place. The Society of Automotive Engineers (SAE) recommended practice for rating heavy-duty vehicle brake block performance, SAE Recommended Practice J661a—*Brake Block Quality Control Test Procedure* was one such standard. The SAE also had a recommended practice for marking heavy vehicle brake blocks with performance data based on the results from the J661a procedure. This SAE Recommended Practice, J866—*Friction Coefficient System For Brake Blocks,* designated the normal temperature and high temperature performance of given block material, and specified procedures for printing the J661 performance ratings on the edge of the block.

Based on its evaluations of the J661a test procedures, the trucking industry concluded that the levels of repeatability and reproducibility of the SAE standards were unacceptably low. Additionally, the trucking industry determined that the test procedure was not realistic since it did not use a full-scale brake block or other full-scale heavy-duty vehicle brake hardware. The J866 specifications and ratings were also deemed unacceptable. According to ATA, a given SAE J866 rating covered such a wide range of brake block performance that vehicle brake balance problems were possible using blocks with the same rating. In addition, the J866 procedure for marking the blocks did not result in permanent markings. As a result, vehicle operators and maintenance personnel often could not identify the performance ratings on in-service blocks.

Since the SAE recommended practices for testing brake block effectiveness and the procedure for marking the blocks with an effectiveness value were unacceptable to the industry, the SAE initiated the development of new procedures in the mid-1980s. At that time, the SAE Brake Committee, Brake Effectiveness Task Force, initiated development of a new procedure for evaluation of the effectiveness of heavy vehicle brake blocks, SAE Recommended Practice J1802—*Brake Block Effectiveness Rating.* The SAE began development of a new specification for rating the effectiveness of brake blocks and permanently labeling the blocks with information concerning the effectiveness (torque output), SAE J1801, *Brake Effectiveness Marking for Brake Blocks.*

The SAE J1802 test procedure is a dynamometer test procedure to be used to compare frictional properties of brake blocks. The test conditions specify a reference full-scale air brake assembly of 16.5 in. X 7.0 in. that utilizes S-cam actuation. The test is initiated with a burnish procedure requiring 200 stops with a 9.8 ft/sec^2 deceleration and with an initial brake temperature of 392° F for each stop. The burnish procedure is followed by the normal temperature test for brake effectiveness, which specifies stops at brake chamber pressures of 10, 15, 20, 25, 30, 35, 40, 45, and 50 psi, with an initial brake temperature for each stop of 212° F. A high temperature test for brake effectiveness is conducted after the normal temperature test, using the same procedure as the normal temperature test with the exception of initial brake temperature, which is 572° F. for each stop. The brake output torque and brake input torque are recorded for each stop from the time the specified air pressure is reached until the brake stops. The SAE J1802 brake effectiveness rating is a calculated, non-dimensional quantity that relates the average output torque determined in the procedure, to the average input torque. In order to make the friction ratings available to end users, SAE J1801 specifies that the actual normal temperature and high temperature brake effectiveness values obtained from J1802 testing be engraved to a depth of 0.2 mm on one side or edge of the brake block (block).

3. Agency Efforts To Develop A Rating

In 1990, NHTSA began working with SAE and the Heavy-duty Brake Manufacturers Council (HDBMC) in the development and evaluation of SAE J1801 and J1802 and the development of possible improvements to them. In that year, dynamometer testing to an early version of J1802, was conducted by three different test facilities using their own funds (Greening Labs, Link Engineering, and Vehicle Research and Test Center). The testing produced significantly different effectiveness ratings for brake blocks that were manufactured to have essentially the same performance characteristics. It could not be determined from this testing whether the differences in effectiveness ratings were due to the variations in actual block performance, differences in test fixtures, or differences in the dynamometers at each facility.

In order to determine the cause of the significant differences in the ratings of brake block effectiveness produced by the three facilities, a round-robin series of brake block testing was conducted. Nine organizations with brake dynamometer testing facilities, including the agency's Vehicle Research and Test Center (VRTC), volunteered to participate in the project using their own funds. For this testing, which was conducted in 1991–1992, a single test fixture that included a brake drum and brake blocks was tested at each facility. After completion of testing at one facility, the brake assembly and brake blocks were forwarded to another of the participating facilities. The primary purpose of this series of tests was to determine the variability of the test results due to differences in the dynamometers at each facility. The test results revealed a small (10–15%) variation in test results that could be attributed to the differences in the dynamometers at each facility.

Based on the results of the single fixture testing results, VRTC conducted

a second series of voluntary round-robin testing in 1992 and 1993 to evaluate the repeatability and reproducibility of the J1802 test procedure. Six brake testing facilities participated in this test series, which involved determining the normal and high temperature brake effectiveness ratings for three brake block materials using the J1802 test procedure. Each facility was supplied with a brake drum and several sets of blocks. The blocks supplied to each facility by a given manufacturer were from the same batch or block manufacturing cycle. Although the entire test series was not completed by all participants, sufficient data were produced for the agency to determine that there was as much as a 50% variation of the effectiveness ratings for the same brake block material when tested at different facilities, and a 20% variation in the effectiveness ratings for the same block material during different tests at the same facility.

The first round-robin test series indicated that the differences in the test facility dynamometers resulted in as much a 10–15% difference in brake block effectiveness values. The increased variation in effectiveness ratings experienced in the second round-robin was attributed to other test parameters such as test fixture, the method of brake assembly installation on the test fixture, and the brake preparation (brake burnishing and brake block grinding).

Additional SAE J1802 research was conducted in 1993–1994 by VRTC with the coordination from HDBMC. These tests were conducted to study the effects of block burnishing and pre-test grinding procedures on the variability in effectiveness demonstrated in the second round-robin test series. The results indicated that neither the burnishing nor grinding of the blocks eliminated variability in brake effectiveness ratings. The pattern of large variations in the SAE J1802 effectiveness ratings from one test facility to the other was unaffected when different burnishing and grinding techniques were used to prepare the blocks for testing.

The 1990–1994 testing by VRTC and other brake test facilities led NHTSA to believe that the SAE J1802 test procedure lacked the repeatability and reproducibility that is needed for federal safety standards. The agency further concluded that the problems were not minor, and considerable time and resources would likely be necessary to solve them. For these reasons, NHTSA decided in 1994 against incorporating the SAE J1802 test procedures into the federal brake performance requirements.

In 1996, NHTSA initiated a project aimed at developing a brake block rating scheme that could be used to provide information to consumers about the effectiveness of heavy truck brake blocks. A one-year feasibility project was conducted at VRTC, which developed several effectiveness test components and test procedures that were different from those in SAE J1802. These differences included variations in burnish cycles, the number of effectiveness stops, and block pre-cutting profiles. New test fixture components and effectiveness test procedures were used to test one original equipment brake block and several aftermarket blocks. Although the VRTC-developed fixture and procedure were successful in eliminating some of the effectiveness variability experienced with SAE J1802, the modified procedure still resulted in considerable variation in block effectiveness. There was a 20–30% variation in effectiveness rating results when a single brake block was tested 10 consecutive times with the new brake components and modified procedures. VRTC then evaluated the variability that might result from using different brake blocks. An original equipment block and two aftermarket brake blocks recommended as replacement blocks were tested. The variability of the effectiveness rating for the original equipment block was about 10%. The variability of the test results for the two aftermarket replacement blocks was 18–25% for one block and 8–25% for the other.

In 1997, NHTSA reviewed the previous J1802 evaluation projects and the NHTSA 1996 research project designed to develop an improved rating procedure for heavy-duty brake block torque effectiveness. The agency decided to examine the SAE J1802 procedure further and determine what, if any modifications would be required to improve the consistency of the test results. A VRTC project, entitled ''S-Cam Brake Effectiveness Comparison Using Two Fixtures and Two Block Types on a Single Inertia Dynamometer,'' examined the effect of using two different test fixtures on the SAE J1802 brake effectiveness ratings. The project was initiated in 1998 and the draft final report was circulated for comment within the agency in January 2000. Measurements were taken on several components of the two SAE J1802 test fixtures including the S-cam profile, the chamber force-displacement calibrations, and brake spider position. VRTC determined that the measured differences in these brake fixture dimensions and performance characteristics were minimal. The two fixtures were then used to test two different sets of brake blocks from two different manufacturers. To eliminate potential sources of variation in the test results, the testing was conducted with the same operator and dynamometer. A limited number of tests indicated that the test fixtures, which were used in previous SAE J1802 testing, did not contribute significantly to the 10.2% variation in effectiveness ratings. Results from previous SAE J1802 testing indicated the existence of several potential causes for variation in block effectiveness ratings including the dynamometer, operator, test set-up procedures, and brake block and/or brake drum material differences.

A computer study funded by the Federal Highway Administration (FHWA) examined the effect of several S-cam type brake parameters on the brake output torque (effectiveness). This computer simulation study, conducted by the University of Michigan Transportation Research Institute (UMTRI), and completed in 1999, found that small variations in the test fixtures could cause significant changes in brake output torque. The study further stated that the brake equilibrium reached during burnish could be disturbed when brake actuation pressure is above or below the burnish pressure. This non-equilibrium condition, caused by differential block wear between the leading and trailing block at equilibrium, may result in the instability of the brake effectiveness ratings experienced in the SAE J1802 testing. The study concluded by recommending that the computer model be extended to include block wear properties to further examine the SAE J1802 brake effectiveness variations.

B. Discussion

As discussed above, NHTSA, FHWA, SAE, and ATA have conducted research over the past 10 years to develop test devices and repeatable, reliable, and reproducible test procedures suitable for the development of heavy vehicle brake block performance ratings. Much of the research activity has focused on the SAE J1802 procedure, which was originally developed in the mid-1980s. Testing conducted in accordance with the SAE J1802 procedures from 1990 through 1994 resulted in brake block effectiveness ratings that vary by up to 50% when a given block is tested at different facilities. Even when a given brake block was subjected to repeat testing at the same facility, test results varied by as much as 20 percent. This level of variability may be acceptable for some applications, but is unacceptably

high for a federal brake block effectiveness rating. Agency efforts made in 1994 and 1995 to reduce this variability were unsuccessful. Further efforts to develop a reliable test procedure, including the 1996 VRTC alternative test scheme study, the VRTC ''S-cam brake comparison study'' and the UMTRI ''S-cam brake computer sensitivity study'' have not reduced this unacceptably high level of variability.

Although SAE J1802 was published in 1993, the research conducted by NHTSA and the other test facilities has consistently indicated that the procedure is not highly accurate at measuring brake block torque output. Consequently, very few brake blocks are marked according to the marking procedure specified in SAE J1801. Resistance to use of the J1802 rating and the J1801 markings is based on the belief that the J1802 ratings suffer from high variability in test results and are not a good predictor of brake block effectiveness.

As a result of the slow progress of SAE J1802 development, the ATA Maintenance Council developed a Recommended Practice (RP) for rating the torque capacity of replacement brake blocks and issued this practice, RP 628, in 1995. The RP 628 uses the dynamometer test procedure in Federal Motor Vehicle Safety Standard (FMVSS) No. 121, *Air Brake Systems* to ensure that replacement brake blocks meet the same requirements as brake blocks for new vehicles. The Maintenance Council and the SAE periodically publish a list of blocks that meet all the FMVSS No. 121 dynamometer test performance requirements. The publications also include the brake output torque measured during a 40-psi constant-brake-chamber-pressure stop to allow comparison of the torque output capacity (effectiveness) of different brake blocks. It was recognized that this procedure had a number of shortcomings and was intended to be an interim procedure. However, RP628 is currently the procedure used most often by brake block manufacturers to evaluate the torque output performance of heavy vehicle, domestic blocks.

Although the Economic Commission for Europe (ECE) has developed a brake block standard, this standard does not provide much guidance for developing a standard suitable for conditions in the U.S. The ECE has procedures for evaluating the torque output performance of replacement brake blocks for powered vehicles and trailers, which are contained in ECE Regulation No. 90 (R90), ''Uniform Provisions Concerning the Approval of Replacement Brake Block Assemblies and Drum Brake Blocks for Power-Driven Vehicles and Their Trailers.'' In general, replacement blocks for heavy trucks, buses, and trailers may be evaluated by installing the blocks on a vehicle for which they are designed and conducting portions of the brake testing specified in ECE Regulation 13, ''Uniform Provisions Concerning the Approval of Vehicle Categories M, N, and O With Regard to Braking.'' Replacement blocks are approved for use only on the type of vehicle tested if the ECE R13 performance requirements are met. Replacement blocks may also be tested for approval either through an inertia dynamometer test procedure or a rolling bench test. If the dynamometer test or the rolling bench test is used to obtain approval for replacement blocks, original equipment blocks for the same type of vehicles must also be tested with the dynamometer or rolling bench procedure. Approval of the replacement blocks is based on a comparison between the test results of the replacement blocks and the original equipment blocks.

To date, none of the ECE member countries or Japan has voluntarily adopted the R90 procedures and requirements for heavy truck, bus, or trailer replacement brake blocks. The ECE R90 requirements were scheduled to become effective in all European Economic Commission (EEC) member countries, in the form of EEC Directive 98/12, in the mid-2000s. There are several issues surrounding the implementation of ECE Directive 98/12 for heavy trucks and trailers that are currently being addressed. According to EEC Directive 98/12 (ECE R90), brake blocks for heavy vehicles are to be packaged in full axle sets (brake blocks for left and right side wheels in the same package). These packages must be handled mechanically due to their weight and consequently, transportation and handling of these packages will be difficult unless there are some adjustments to the packaging requirements. Additionally, the European friction material manufacturers do not generally assemble the blocks to the brake shoes. As a result, mismatching of shoe-block attachment hardware (rivets and rivet bore sizing) is also an issue. As noted, the regulation requires that the performance of replacement blocks be compared to the performance of original equipment blocks if the dynamometer or rolling bench tests are used for approval. The specific tests and compliance requirements for these tests have not been finalized to date.

As previously stated, the agency does not consider the EEC Directive 98/12 (ECE R90) test procedures and performance requirements as suitable for application in the U.S. The full-scale vehicle test using older model vehicles equipped with new replacement parts is costly and time-consuming. In addition, this testing only assesses brake block performance in a specific vehicle. To date, test procedures and compliance requirements for the dynamometer test and the rolling bench test in Europe have not been finalized. We have asked the European governments and industry, at the ECE meetings of the Working Party on Brakes and Running Gear (GRRF), for any research data, tests, or other findings that they may have, which could assist NHTSA in developing an acceptable test for brake block effectiveness. They indicated that they did not have any such data.

In considering whether to commence a rulemaking action in this case, NHTSA notes that the continuing difficulties encountered in developing an acceptable brake block effectiveness test indicate that an acceptable test is elusive. Further, in deciding whether to continue this effort, and to expend agency resources in furtherance of this effort, the agency must also consider the safety problem to be addressed by a brake block effectiveness standard and whether other means are available to address that problem. ATA's petition for rulemaking indicated that heavy vehicle wheel lockup and the resultant potential for instability was one of the primary concerns it sought to have the agency address through a brake block effectiveness rule. In theory, using brake blocks with a similar effectiveness on each axle can reduce the risk of instability in situations where brake blocks with different friction characteristics would cause braked wheels to decelerate at different rates. Wheel lockup can have a severe impact on vehicle control and stability, particularly in heavy trucks and truck-trailer combinations under slippery roadway conditions.

NHTSA believes that there are safety benefits that would be associated with the issuance of a heavy vehicle brake block performance rating standard, although we are not aware of any study that has quantified these benefits. As a result, the agency does not believe the research in this area should be terminated, although the current problems will not be readily solved based on the experience of the past 10–12 years. The agency wants to be clear on the fact that only the rulemaking activities are being terminated, not the research. In fact, as proposed by the Senate, the agency's fiscal year 2002 budget includes $300,000.00 for

research into brake lining friction. A reliable rating system would allow vehicle users to select brake blocks with similar wear and performance characteristics. A reliable rating system would also allow users to select a block appropriate for the expected use of the vehicle. However, the most recently completed research projects indicate that considerably more research is required to improve the reliability of existing test procedures or to develop another acceptable procedure.

Further, the agency notes that heavy truck stability under braking has been addressed by a means other than a brake block effectiveness rating standard. In March 1995, the agency issued final rules requiring antilock brake systems (ABS) on heavy-duty vehicles including air braked truck tractors, trucks and buses, and hydraulically braked trucks and buses (60 FR 13216, March 10, 1995). The rule became effective for air-braked truck tractors in March 1997. For air-braked trailers, single unit trucks and buses, the requirements for ABS became effective in March 1998. The ABS requirements for hydraulically-braked trucks and buses became effective in March 1999. NHTSA believes that the ABS requirements will significantly reduce wheel lockup and the resultant potential for vehicle instability. ABS reduces the vehicle instability that results from brake imbalance because it modulates the brake torque to prevent lockup at each wheel or axle where it is installed. ABS does not address or alleviate all safety concerns related to differential brake block performance such as stopping distance performance. However, the ABS requirement improves vehicle stability during braking, which is the primary concern expressed by ATA in the original petition.

Due to the substantial technical obstacles that still remain in regard to development of a test procedure and the advent of ABS requirements that, in part, address the safety need that would be met by a brake block effectiveness rating, NHTSA has determined that further rulemaking action on the Grabowsky and ATA petitions is unwarranted. However the agency does not believe that research and evaluation of a dynamometer-based procedure for evaluating the torque output of heavy vehicle brake blocks should be terminated.

C. Agency Determination

For the reasons stated above, NHTSA is terminating this rulemaking action.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: July 3, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–17193 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 062102B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has determined that an application for EFPs contains all of the required information and warrants further consideration. The Regional Administrator is considering the impacts of the activities to be authorized under the EFPs with respect to the Northeast Multispecies Fishery Management Plan (Multispecies FMP) and the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (Highly Migratory Species (HMS) FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs in response to an application submitted by the East Coast Tuna Association that would allow five purse seine vessels to fish for giant Atlantic bluefin tuna (*Thunnus thynnus*) in Northeast multispecies year-round Closed Area I, where use of purse seine gear is currently prohibited. The purpose of the study is to collect information regarding bycatch of—and interactions of purse seine gear with—groundfish species, other species, and marine mammals, and to record contact with the ocean bottom or with any Essential Fish Habitat (EFH). The results of this EFP would allow NMFS and the New England Fishery Management Council (Council) to evaluate the feasibility of allowing purse seine gear in Closed Area I as an exempted gear on a permanent basis.

DATES: Comments on this action must be received at the appropriate address or fax number (see **ADDRESSES**) on or before July 24, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on EFP Proposal.'' Comments may also be sent via fax to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Environmental Assessment and the Regulatory Impact Review (EA/RIR) are available from the Northeast Regional Office at the same address.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, phone: 978–281–9103, fax: 978–281–9135, email: allison.ferreira@noaa.gov

SUPPLEMENTARY INFORMATION:

Background

The Georges Bank and Southern New England (GB/SNE) multispecies year-round closed areas were established under the Multispecies FMP to provide protection to concentrations of regulated multispecies, particularly cod, haddock, and yellowtail flounder. Consequently, all fishing in these year-round closed areas was prohibited, with a few exceptions. The only exceptions allowing access to the closed areas were fishing activities known to have a very low incidence of multispecies bycatch. For example, pelagic midwater trawl gear was determined to have a negligible catch of regulated multispecies because the gear fishes well off the ocean floor. As a result, it is an allowed gear in the GB/SNE multispecies closed areas.

Purse seine gear is typically used to target pelagic species such as herring, mackerel, and tuna that are concentrated at or near the surface of the ocean. This type of gear is not designed or intended to fish for species at or near the ocean floor, and is typically considered to have very little interaction with bottom-dwelling species such as groundfish. Observer data from the 1996 tuna purse seine fishery, the last year the fishery carried full-time observers, documented a small catch of regulated groundfish, other demersal species, and bottom debris (i.e., sponges and empty shells) in 20 out of 39 observed sets. Out of these 20 sets, only 4 occurred inside Closed Area I, in depths ranging from 28 to 35 fathoms (fm). In 2000, EFPs were issued to four purse seine vessels to collect information on the interaction between purse seine gear and demersal species

and their habitat, specifically in Closed Area I. Data from the five observed trips in Closed Area I from the 2000 tuna purse seine experimental fishery did not show any bycatch of demersal species. These sets occurred in depths ranging from 55 to 86 fm. In 2001, EFPs were issued to all five vessels authorized to fish for bluefin tuna with purse seine gear. During this experiment, four trips were made into Closed Area I. On a single trip, one of the participating vessels made three sets inside Closed Area I in depths ranging from 40 to 60 fm. Bluefin tuna were caught on only one of these three sets, totaling 82 bluefin tuna for the trip and for the 2001 experimental fishery as a whole.

During the 2000 experimental fishery, participating vessels were required to fish in locations where the water depth was greater than 30 fathoms, or where the depth of the water was greater than the depth of the net at its deepest point, or modify the net in use by this vessel so that its depth was less than the depth of the water in order to avoid adverse impacts to EFH. For the 2001 experimental fishery, the applicant indicated that the gear could be fished in such a way that it would not come in contact with the bottom, regardless of the depth of the net or water. The applicant also stated that due to the currents and tides in Closed Area I, the net would never extend below the sea surface to the full extent of its height. Therefore, the applicant requested that the depth restrictions implemented for the 2000 experimental fishery be removed, stating that the incentive to protect the purse seine gear from interactions with the ocean floor would result in careful attention to keep the gear off the bottom. In light of the information provided by the applicant, the depth restrictions of the 2000 experimental fishery were waived for the 2001 fishery. Because the results of the 2001 fishery indicate that there were no interactions between the gear and bottom habitat, NMFS does not intend to implement depth requirements for the 2002 experimental fishery.

Due to lingering questions concerning the degree of interactions between purse seine gear used in this fishery and its interactions with regulated groundfish species, a third experimental fishery has been requested. The Council is considering an exemption for tuna purse seine gear within all groundfish closed areas as part of Amendment 13 to the Multispecies FMP. Information collected through this experimental fishery would be used in development of Amendment 13.

Proposed EFP

The proposed EFP would exempt five purse seine vessels fishing for giant Atlantic bluefin tuna under 50 CFR part 635 from the gear restrictions of Closed Area I, as described at 50 CFR 648.81(a). Similar to the 2000 and 2001 purse seine experimental fisheries in Closed Area I, no more than five vessels would be authorized to participate. The experimental fishery would begin on August 15, 2002, and continue until the five vessels have achieved their individual fishing quotas, or the end of the 2002 calendar year, whichever occurs first. Although these individual quotas may be taken through the end of the 2002 fishing year (December 31, 2002), they are typically taken by the middle of October. Because the bluefin tuna fishery takes place throughout the waters off New England, and the concentrations of fish often move between areas, it is likely that the fishery would take place within Closed Area I for only a few weeks.

Unlike the 2000 and 2001 experimental fisheries, observers will not be required for the proposed 2002 experimental fishery. As a result, the vessel captains will be required to collect information on bottom depth, depth of net, mesh size used, location of set, information on any bycatch species, any interactions between the net and the bottom, and any incidental take of marine mammals or protected species. Any multispecies that are captured during fishing activities will be required to be discarded.

Environmental Assessments (EAs) that analyzed the impacts of the experimental tuna purse seine fishery on the human environment were prepared for the 2000 and 2001 experimental fisheries. These EAs concluded that the activities that were conducted under the EFP are consistent with the goals and objectives of the Multispecies FMP, are consistent with the HMS FMP, and will have no significant environmental impacts. The EAs also considered the impacts of the EFP activities on EFH, marine mammals, and protected species and found that the experimental tuna purse seine fishery will have no significant impact to EFH, marine mammals, or protected species. A EA was prepared for the 2001 experimental fishery and a Supplement to the EA has been prepared for the 2002 experimental fishery. This supplement incorporates the results of the 2001 experimental fishery, discusses minor changes to the experimental fishery for 2002, addresses the cumulative impacts of the proposed 2002 experimental fishery, and provides a revised Finding of No Significant Impact Statement.

EFPs would be issued to the five participating vessels to exempt them from the restrictions of Closed Area I of the Multispecies FMP.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 2, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17155 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 697

[I.D. 060502A]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Application for Exempted Fishing Permit (EFP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a request for an EFP to harvest horseshoe crabs; request for comments.

SUMMARY: NMFS announces that the Director, Office of Sustainable Fisheries, is considering issuing an EFP to Limuli Laboratories to conduct a second year of an experimental fishing operation otherwise restricted by regulations prohibiting the harvest of horseshoe crabs in the Carl N. Schuster Jr. Horseshoe Crab Reserve (Reserve) located 3 nautical miles (nm) seaward of the mouth of Delaware Bay. NMFS is considering issuing an EFP for the harvest of 10,000 horseshoe crabs for biomedical purposes and requiring as a condition of the EFP the collection of data related to the status of Delaware Bay horseshoe crabs within the Reserve. Therefore, this document invites comments on the issuance of an EFP to Limuli Laboratories.

DATES: Comments on this action must be received on or before July 24, 2002.

ADDRESSES: Written comments should be sent to John H. Dunnigan, Director,

Office of Sustainable Fisheries, NMFS, 1315 East West Highway, Room 13362, Silver Spring, MD 20910. Mark the outside of the envelope ''Comments on Horseshoe Crab EFP Proposal.'' Comments may also be sent via facsimile (fax) to (301) 713-0596. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Tom Meyer, Fishery Biologist, (301) 713–2334.

SUPPLEMENTARY INFORMATION:

Background

The regulations that govern exempted fishing, at 50 CFR 600.745(b) and 697.22 allow a Regional Administrator or the Director of the Office of Sustainable Fisheries to authorize for limited testing, public display, data collection, exploration, health and safety, environmental clean-up and/or hazardous removal purposes, the targeting or incidental harvest of managed species that would otherwise be prohibited. An EFP to authorize such activity may be issued, provided there is adequate opportunity for the public to comment on the EFP application, the conservation goals and objectives of the fishery management plan are not compromised, and issuance of the EFP is beneficial to the management of the species.

The Reserve was established on February 5, 2001 (66 FR 8906), to provide protection for the Atlantic coast stock of horseshoe crabs, and to promote the effectiveness of the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for horseshoe crab. The final rule prohibited fishing for horseshoe crabs in the Reserve and the possession of horseshoe crabs on a vessel with a trawl or dredge aboard while in the Reserve. The rule did not allow for any biomedical harvest or the collection of fishery dependent data. However, in the comments and responses section, NMFS stated that it would consider issuing EFPs for the biomedical harvest of horseshoe crabs from the Reserve.

The biomedical industry collects horseshoe crabs, removes approximately 30 percent of their blood, and returns them alive to the water. Approximately 10 percent do not survive the bleeding process. The blood contains a reagent called Limulus Amebocyte Lysate (LAL) that is used to test injectable drugs and medical devices for bacteria and bacterial by-products. Presently, there is no alternative to LAL derived from the horseshoe crab.

NMFS manages horseshoe crabs in the exclusive economic zone in close cooperation with the Commission. The Commission's Horseshoe Crab Management Board met on April 21, 2000, and recommended that biomedical companies with a history of collecting horseshoe crabs in the Reserve be given an exemption to continue their historic levels of collection not to exceed a combined harvest total of 10,000 crabs annually. The Commission's Horseshoe Crab Plan Review Team has reported that biomedical harvest of up to 10,000 horseshoe crabs should be allowed to continue in the Reserve given that the resulting mortality should be only about 1,000 horseshoe crabs (10 percent mortality during bleeding process). Also, the Commission's Horseshoe Crab Stock Assessment Committee Chairman recommended that, in order to protect the Delaware Bay horseshoe crab population from over-harvest or excessive collection mortality, no more than a maximum of 20,000 horseshoe crabs should be collected for biomedical purposes from the Reserve. In addition to the direct mortality of horseshoe crabs that are bled, it can be expected that more than 20,000 horseshoe crabs will be trawled up and examined for LAL processing. This is because horseshoe crab trawl catches usually include varied sizes of horseshoe crabs and large female horseshoe crabs are the ones selected for LAL processing. The unharvested horseshoe crabs are released at sea with some unknown amount of mortality, but this mortality is expected to be negligible.

Collection of horseshoe crabs for biomedical purposes from the Reserve is necessary because of the low numbers of horseshoe crabs found in other areas along the New Jersey Coast from July through October and in light of the critical role horseshoe crab blood plays in proper health care. In conjunction with the biomedical harvest, NMFS is considering requiring that scientific data be collected from the horseshoe crabs taken in the Reserve as a condition of receiving an EFP. Since the Reserve was established on February 5, 2001, the only fishery data from this area were collected under an EFP issued to Limuli Laboratories on September 28, 2001, which allowed collections until October 31, 2001. Further data are needed to improve the understanding of the horseshoe crab population in the Delaware Bay area and to better manage the horseshoe crab resource under the cooperative state/Federal management program. The information collected through the EFP will be provided to NMFS, the Commission and to the State of New Jersey.

Results of Previous Year's EFP

On April 11, 2001, Limuli Laboratories (Limuli) submitted an EFP application to collect horseshoe crabs for biomedical and data collection purposes from the Carl N. Schuster Jr. Horseshoe Crab Reserve (Reserve), and subsequently submitted a supplement on July 9, 2001. An EFP was issued to Limuli on September 28, 2001, which allowed them to collect horseshoe crabs until October 31, 2001, in the Reserve. To complete the study proposed in the EFP application, Limuli needed to collect from August through October. The study was modified and conducted with some limitations because of the late start. Limuli Laboratory is operated seasonally and was closed down in mid-September; therefore, the horseshoe crabs collected during the EFP study were not bled for manufacture of LAL, but were used for data collection purposes. A total of 250 horseshoe crabs were collected and examined (133 females and 117 males) from the Reserve on three dates, October 12th, 24th, and 29th, 2001. The specimens were sexed, measured, aged, tagged and released. The horseshoe crabs were aged in 4 categories using Dr. Schuster's criteria of aging by appearance: first year or virgin, young, medium and old age. When separated into age categories, 62 percent were classified as young animals. The majority of the horseshoe crabs had encrusting slipper shells on their shells. The collected crabs were active with only one crab dying during the trawling process. Thirty percent of the horseshoe crabs showed sign of healed injuries/deformities and 3 percent had new injuries. Only one of the new injuries appeared life threatening. More females had injuries than males; 40 versus 25 percent. After tagging was performed, horseshoe crabs were released at the water's edge at Highs Beach, New Jersey. One added benefit of the study was an opportunity to photographically document the condition of horseshoe crabs (15 females and 15 males) after collection by the trawl, which is the primary method used to capture horseshoe crabs for the manufacture of LAL.

Proposed EFP

Limuli proposes to conduct a second year of the study using the same means and methods used during year one.

The proposed EFP would exempt one commercial vessel from regulations at 50 CFR 697.7(e), which prohibit fishing for horseshoe crabs in the Reserve described in § 697.23(f)(1) and prohibit

possession of horseshoe crabs on a vessel with a trawl or dredge aboard in the same Reserve.

Limuli Laboratories of Cape May Court House, in cooperation with the State of New Jersey's Division of Fish and Wildlife, submitted an application for an EFP on May 31, 2002, and a supplement on June 6, 2002. NMFS has made a preliminary determination that the subject EFP contains all the required information and warrants further consideration. NMFS has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Federal horseshoe crab regulations and the Commission's Horseshoe Crab ISFMP.

The regulations at 50 CFR 600.745(b)(3)(v) authorize NMFS to attach terms and conditions to the EFP consistent with the purpose of the exempted fishery, the objectives of the horseshoe crab regulations and fisheries management plan, and other applicable law. NMFS is considering terms and conditions such as:

(1) Limiting the number of horseshoe crabs collected in the Reserve to no more than 500 per day and to a total of no more than 10,000 per year;

(2) Requiring collection under an EFP to take place over a total of approximately 20 days during the months of July, August, September, and October. Horseshoe crabs are readily available in harvestable concentrations nearshore earlier in the year, and offshore in the Reserve during July through October;

(3) Requiring a 5 and one-half inch flounder net to be used by the vessel to collect the horseshoe crabs. This condition would allow for continuation of traditional harvest gear and adds to the consistency in the way horseshoe crabs are harvested for data collection;

(4) Limiting trawl tow times to 30 minutes as a conservation measure to protect sea turtles, which are expected to be migrating through the area during the collection period, and are vulnerable to bottom trawling;

(5) Restricting the hours of fishing to daylight hours only, approximately from 7:30 a.m. to 5 p.m. to aid law enforcement. NMFS also is considering a requirement that the State of New Jersey Law Enforcement be notified daily when and where the collection will take place; and

(6) Requiring that the collected horseshoe crabs be picked up from the fishing vessels at docks in the Cape May Area and transported to local laboratories, bled for LAL, and released alive the following morning into Lower Delaware Bay.

Also as part of the terms and conditions of the EFP, for all horseshoe crabs bled for LAL, NMFS is considering a requirement that the EFP holder provide information on sex ratio and daily numbers, and tag 10 percent of the horseshoe crabs harvested. Also, the EFP holder may be required to examine at least 200 horseshoe crabs for:

a. Morphometric data, by sex–e.g. interocular (I/O) distance and weight, and

b. Level of activity, as measured by a response or by distance traveled after release on a beach.

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17044 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 070102F]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting notification.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3–day Council meeting on July 23 through 25, 2002, to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, Wednesday, and Thursday July 23, 24, and 25, 2002. The meeting will begin at 8:30 a.m. on Tuesday and at 8 a.m. on Wednesday and Thursday.

ADDRESSES: The meeting will be held at the DoubleTree Hotel, 1230 Congress Street, Portland, ME 04102; telephone (207) 774–5611. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, July 23, 2002

Following introductions, the Council will consider approval of initial action on Framework Adjustment 2 to the Monkfish Fishery Management Plan (FMP). The action would implement the measures contained in NMFS's spring 2002 monkfish emergency rule, including a revision to the overfishing reference point that defines the maximum fishing mortality rate threshold, and allows for calculations that would adjust the days at sea (DAS) allocations and/or trip limits to achieve the monkfish catch targets in Fishing Year 2003. The Council also will consider and approve management alternatives for inclusion in Amendment 2 to the FMP, for purposes of analysis in the associated Draft Supplemental Environmental Impact Statement (DSEIS). Issues to be considered may include, but are not limited to: revisions to the overfishing definition reference points; adjustments to the DAS program; a management program for a deepwater directed monkfish fishery; individual vessel quotas or DAS allocations; permit qualification criteria; and management measures for vessels fishing for monkfish only south of 38 degrees N. Following a noontime break, the Scallop Committee will recommend approval of initial action on the annual framework adjustment to the Sea Scallop FMP (Framework Adjustment 15). The Council will identify management alternatives for inclusion in the framework. These may include, but are not limited to, an adjustment to the 2003 scallop vessel DAS allocations and continued controls on scallop harvests in the Virginia Beach and Hudson Canyon areas of the Mid-Atlantic. The Council also is scheduled to vote on final approval of the herring specifications to be recommended to NMFS for 2003. This will occur following a review of the 2001 Herring Stock Assessment and Fishery Evaluation (SAFE) Report and a presentation on the recommendations of the Herring Plan Development Team, and the Herring Oversight Committee and its Advisory Panel concerning the specification of optimum yield, levels of domestic annual harvest and processing, including at-sea processing, border transfer, and the amount of herring that may be made available in 2003 to foreign joint venture processing (JVP and IWP) and foreign directed fishing (TALFF), if any. In addition, NMFS will consult with the Council concerning industry requests for an inseason increase to the 2002 specifications for JVP and IWP. The Skate Committee will

review and seek Council approval of the revised sections of the Draft Skate FMP/Environmental Impacts Statement being prepared for resubmission to NMFS. Following this agenda item, the Council will provide a brief opportunity for comments from the public on issues that are not otherwise listed on the agenda, but relevant to Council business. The day will conclude with reports on recent activities from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission.

Wednesday, July 24 and Thursday, July 25 2002

The Council meeting will re-convene on Wednesday with a presentation from NMFS staff on the Gear Effects Workshop held in October, 2001 and continue with Council consideration of the Habitat Committee's recommendations on measures to minimize the impacts of groundfish fishing on Essential Fish Habitat. The remainder of the day and the entire next day will be devoted to consideration of issues associated with the development of Amendment 13 to the Northeast Multispecies FMP. The Council will select alternatives for inclusion in a Draft SEIS. The discussion will include incorporation of U.S./Canada Sharing Agreement into Amendment 13.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

The New England Council will consider public comments at a minimum of two Council meetings before making recommendations to the National Marine Fisheries Service Regional Administrator on certain framework adjustments to a fishery management plan. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 3, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17156 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 131
Tuesday, July 9, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation Request for Reinstatement of an Approval for an Information Collection

AGENCY: Farm Service Agency and the Commodity Credit Corporation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Farm Service Agency (FSA) and the Commodity Credit Corporation (CCC) to request a reinstatement for an information collection previously approved in support of the FSA and CCC Debt Settlement Policies and Procedures regulations. Provisions in the Federal Agriculture Improvement and Reform Act of 1996 and in the Debt Collection Improvement Act of 1996 have resulted in a decrease in burden hours for information collection under the FSA and CCC Debt Settlement Polices and Procedures program.

DATES: Comments on this notice must be received on or before September 9, 2002 to be assured consideration.

Additional Information: Thomas F. Harris II, Claims Specialist, Financial Management Division, Farm Service Agency, USDA, STOP 0581, P.O. Box 2415, Washington, DC 20013–2415; telephone (703) 305–1439.

SUPPLEMENTARY INFORMATION:

Title: Debt Settlement Policies and Procedures.

OMB Control Number: 0560–0146.

Type of Request: Reinstatement of Approval for an Information Collection.

Abstract: The information collected under the Office of Management and Budget (OMB) Number 0560–0146, as identified above, is needed to enable FSA and CCC to effectively administer the regulations at 7 CFR 792 (FSA) and 7 CFR 1403 (CCC) relating to debt settlement policies and procedures and to the identification of and settlement of outstanding claims. Collection of outstanding debts owed to FSA or to CCC can be effected by installment payments if a debtor furnishes satisfactory evidence of inability to pay a claim in full, and if the debtor specifically requests for an installment agreement. Part of the requirement is that the debtor furnish this request in writing and with a financial statement or other information that would disclose a debtor's assets and liabilities. This information is required in order to evaluate any proposed plan. Such documentation requests furnished by the debtor are also used in the other collection tools employed by both FSA and CCC in managing debt settlement policies and procedures. If an installment agreement is approved, then a Promissory Note (CCC–279), or an approved alternative promissory note format, must be executed between the debtor and the FSA/CCC representative(s). The Debt Collection Improvement Act of 1996 requires the head of an agency to take all appropriate steps to collect delinquent debts before discharging such debts. These steps require the employment of these information collection forms and formats which have been successfully used for the past several years and which have become familiar tools for both the agency employees and for the producer. Thus, forms and formats already exist and are in use. Having to develop and introduce new forms and formats into the market place would add additional burdens and costs to both the producer and to the agency in the handling of the claim settlement and collection processes and would create additional burdens not called for under the Debt Collection Improvement Act of 1996.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 30 minutes per response.

Respondents: Producers participating in FSA and CCC programs.

Estimated Number of Respondents: 250.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 125 hours.

Topics for comment include but are not limited to the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Thomas F. Harris II, Claims Specialist, Financial Management Division, Farm Service Agency, USDA, STOP 0581, 1400 Independence Ave., SW., Washington, DC 20250–0581; telephone (703) 305–1439. Copies of the information collection may be obtained from Thomas F. Harris II at the above address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on June 28, 2002.

James R. Little,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–17123 Filed 7–8–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Tobacco Marketing Quota Referendum Ballot

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection associated with

Tobacco Marketing Quota Referendum Ballot. This information collection is necessary for tobacco farmers and other eligible persons to vote on favoring or opposing the marketing quotas for any kind of tobacco.

DATES: Comments about this notice must be received in writing on or before September 9, 2002 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Tobacco and Peanuts Division, FSA, USDA, 1400 Independence Avenue, SW., Room 5750–S, STOP 0514, Washington, DC 20250–0514. Comments may be submitted via facsimile to (202) 720–0549 or by e-mail to: *tob_comments@wdc.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Tobacco and Peanuts Division, (202) 720–2715 and *ann_wortham@wdc.usda.gov*. The public may inspect comments received and the copies of the forms at Tobacco and Peanuts Division, FSA, 1400 Independence Avenue, SW., Room 5750-S, during normal business hours. Visitors are encouraged to call ahead to (202) 720–7413 to facilitate entry to the building. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Tobacco Marketing Quota Referenda Ballot.

OMB Control Number: 0560–0182.

Form Number: MQ–5.

Type of Request: Extension with Revision of a Currently Approved Information Collection.

Abstract: This information collection is used by the Farm Service Agency (FSA) in administering the national tobacco marketing quota program; specifically, the Agricultural Adjustment Act of 1938 (the 1938 Act) requires that national tobacco marketing quotas be established each year only if tobacco producers favor it for the next three years. FSA County offices collect information from the voters by mailing them a Ballot Form or polling them at certain places. The Ballot Form (MQ5) contains a question of favoring the marketing quotas for a certain kind of tobacco with ''YES'' or ''NO'' answer to the question. Eligible to vote are tobacco allotment and quota owners and growers who share in the risk of producing the kind of tobacco for which a referendum is held. The FSA County Committee tabulates the votes and the final count is used to determine whether or not a national marketing quota will be established annually for the certain kinds of tobacco. If the information is not collected, the requirements of the 1938 Act will not be met and FSA would have no way to determine whether tobacco farmers want to continue the national marketing quotas and the price support program. FSA would lack the necessary information to administer the national tobacco marketing quotas.

Estimate of Annual Burden: 5 minutes.

Type of Respondents: Tobacco farmers who are eligible to vote in a referendum.

Estimated Annual Number of Respondents: 155,000.

Estimated Annual Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 13,000 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed at Washington, DC, on June 28, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–17122 Filed 7–8–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes and Ochoco National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes and Ochoco National Forests Resource Advisory Committee will meet on Tuesday, July 30, 2002 at the Central Oregon Intergovernmental Council building, main conference room, 2363 SW. Glacier Place, Redmond, Oregon. The meeting will begin at 9 a.m. and continue until 5 p.m. Committee members will review projects proposed and make recommendations under Resource Advisory Committee consideration under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000. All Deschutes and Ochoco National Forests Resource Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Leslie Weldon, Designated Federal Official, USDA, Deschutes National Forest, 1645 Highway 20 East, Bend, Oregon 97701, 541–383–5512.

Dated: June 24, 2002.

Leslie A.C. Weldon,

Forest Supervisor, Deschutes National Forest.

[FR Doc. 02–17157 Filed 7–8–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Gifford Pinchot National Forest Resource Advisory Committee will meet on Thursday, July 18, 2002 at the Skamania County Public Works Department basement located in the Courthouse Annex, 170 NW. Vancouver Avenue, Stevenson, Washington. The meeting will begin at 9 a.m. and continue until 5 p.m. The purpose of the meeting is to:

(1) Review and recommend for funding Title II projects for fiscal year 2003.

(2) Provide for a Public Open Forum.

All South Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides an opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled as part of agenda item (2) for this meeting. Interested

speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Tom Knappenberger, Public Affairs Officer, at (360) 891–5005, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE 51st Circle, Vancouver, WA 98682.

Dated: July 1, 2002.

Claire Lavendel,

Forest Supervisor.

[FR Doc. 02–17158 Filed 7–8–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Notice of Intent to Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of 2000–2001 administrative review, partial rescission of the review, and notice of intent to revoke order in part.

SUMMARY: We preliminarily determine that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were made below normal value during the period June 1, 2000, through May 31, 2001. We are also rescinding the review, in part, in accordance with 19 CFR 351.213(d)(3).

Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory, Wanxiang Group Corporation, and Zhejiang Machinery Import & Export Corp. have requested revocation of the antidumping duty order in part. Based on record evidence, we preliminarily find that only Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory qualifies for revocation. Accordingly, we preliminarily determine to revoke the order with respect to the subject merchandise produced and exported by Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory, but not with respect to the subject merchandise produced and exported by the other two companies.

If these preliminary results are adopted in our final results of review, we will instruct the Customs Service to assess antidumping duties based on the differences between the export price or constructed export price and normal value on all appropriate entries. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Melani Miller, S. Anthony Grasso, or Andrew Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0116, (202) 482–3853, or (202) 482–1276, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references to the Department of Commerce's (''the Department'') regulations are to 19 CFR Part 351 (April 2001).

Background

On May 27, 1987, the Department published in the **Federal Register** (52 FR 19748) the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (''TRBs''), from the People's Republic of China (''PRC''). The Department notified interested parties of the opportunity to request an administrative review of this order on June 11, 2001 (66 FR 31203). On June 28, 2001, Zhejiang Machinery Import & Export Corp. (''ZMC'') requested an administrative review, and also requested that the Department revoke the antidumping duty order as it pertains to that company. On June 29, 2001, Wanxiang Group Corporation (''Wanxiang''), China National Machinery Import & Export Corporation (''CMC''), Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory (''Hailin''), Luoyang Bearing Corporation (Group) (''Luoyang''), and Weihai Machinery Holding (Group) Co., Ltd. (''Weihai'') also requested administrative reviews. Hailin, Weihai, and Wanxiang also requested that the Department revoke the antidumping duty order as it pertains to them. Also on June 29, 2001, the petitioner, The Timken Company, requested that the Department conduct an administrative review of the antidumping duty order on hundreds of PRC TRBs exporters. The petitioner revised its request on July 10, 2001. In accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on July 23, 2001 (66 FR 38252).

On August 6, 2001, Chin Jun Industrial Ltd. (''Chin Jun'') reported that it had no shipments of subject merchandise to the United States during the period of review (''POR''), June 1, 2000, through May 31, 2001. In accordance with 19 CFR 351.213(d)(3), we preliminarily conclude that there were no shipments from Chin Jun to the United States during the POR and are preliminarily rescinding the review with respect to this company. However, prior to issuing the final results, we will confirm with the Customs Service that Chin Jun had no shipments during the POR.

On August 14, 2001, we sent a questionnaire to the Secretary General of the Basic Machinery Division of the Chamber of Commerce for Import & Export of Machinery and Electronics Products and requested that the questionnaire be forwarded to all PRC companies identified in our initiation notice and to any subsidiary companies of the named companies that produce and/or export the subject merchandise. In this letter, we also requested information relevant to the issue of whether the companies named in the initiation notice are independent from government control. *See* the ''Separate Rates Determination'' section, below. Courtesy copies of the questionnaire were also sent to companies with legal representation.

We received responses to the questionnaire in September and October 2001 from the following seven companies: Liaoning MEC Group Co. Ltd. (''Liaoning''), CMC, ZMC, Wanxiang, Hailin, Weihai, and Luoyang. With respect to Liaoning, on September 21, 2001, we rejected Liaoning's Section A questionnaire response because neither the petitioner nor Liaoning had requested an administrative review and we did not consider Liaoning to be a respondent in the instant proceeding. The petitioner submitted comments on the remaining questionnaire responses in November 2001. We sent out supplemental questionnaires to CMC, ZMC, Wanxiang, Hailin, Weihai, and Luoyang in November and December 2001, and January, March, and April 2002, and received responses to these supplemental questionnaires in December 2001 and January, March, April, and May 2002.

On April 4, 2002, Weihai withdrew its request for a review. The petitioner did not request a review for Weihai. While Weihai's rescission request was made more than 90 days after initiation, 19 CFR 351.213(d)(1) provides that the Department may extend this deadline, and it is the Department's practice to do so where it poses no undue burden on the parties or on the Department. Therefore, in accordance with 19 CFR 351.213(d)(1), we have rescinded the review with respect to Weihai. For a complete discussion of this decision *see* the Memorandum from Team to Susan Kuhbach, ''Partial Rescission of Review,'' dated May 20, 2002.

Scope of the Order

Merchandise covered by this order includes TRBs and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under *Harmonized Tariff Schedule* of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Verification

As provided in section 782(i) of the Act, in May 2002, we verified information provided by Hailin using standard verification procedures, including onsite inspection of manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information.

Separate Rates Determination

The Department has treated the PRC as a nonmarket economy (''NME'') country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC TRBs industry is a market-oriented industry.

Therefore, we are treating the PRC as an NME country within the meaning of section 773(c) of the Act. We allow companies in NME countries to receive separate antidumping duty rates for purposes of assessment and cash deposits when those companies can demonstrate an absence of government control, both in law and in fact, with respect to export activities.

To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes:

1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management (*see Silicon Carbide*, 59 FR at 22587, and *Sparklers*, 56 FR at 20589).

In previous administrative reviews of the antidumping duty order on TRBs from the PRC, we determined that CMC, Luoyang, Hailin, Wanxiang, and ZMC, should receive separate rates (*see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 57420 (November 15, 2001) (''*TRBs XIII*''). We preliminarily determine that the evidence on the record of this review also demonstrates an absence of government control, both in law and in fact, with respect to these companies' exports according to the criteria identified in *Sparklers* and *Silicon Carbide*. The evidence in question consists of, among other things, the companies' business licenses and copies of relevant PRC laws on trade and incorporation. Therefore, we have continued to assign each of these companies a separate rate.

Additionally, we have preliminarily determined that companies which did not respond to the questionnaire should not receive separate rates. *See* the ''Use of Facts Otherwise Available'' section, below.

Use of Facts Otherwise Available

We preliminarily determine that companies that did not respond to our requests for information did not cooperate to the best of their abilities. Thus, in accordance with sections 776(a) and (b) of the Act, the use of adverse facts available is appropriate for such companies.

Companies that did not respond to the questionnaire: Where the Department must base its determination on facts available because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to use an inference that is adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination in the investigation, a previous administrative review, or any other information placed on the record. Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information with independent sources reasonably at its disposal. The Statement of Administrative Action provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not

necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department

disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expenses resulting in an unusually high margin)).

We have preliminarily assigned a margin of 33.18 percent to those companies for which we initiated a review that did not respond to the questionnaire. This margin, calculated for sales by Xiangfan Machinery Import & Export (Group) Corp. during the 1996–1997 review (*Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996–1997 Antidumping Administrative Review and New Shipper Review and Determination Not to Revoke Order in Part*, 63 FR 63842 (November 17, 1998)), represents the highest overall margin for any firm during any segment of this proceeding. As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances or documentation indicating that this margin is inappropriate as adverse facts available. Therefore, we preliminarily find that the 33.18 percent rate is corroborated.

As noted in the ''Separate Rates Determination'' section above, we have also preliminarily determined that the non-responsive companies should not receive separate rates. Thus, they are viewed as part of the PRC-wide entity. Accordingly, the facts available for these companies form the basis for the PRC rate, which is 33.18 percent for this review.

Export Price and Constructed Export Price

For certain sales made by CMC to the United States, we used constructed export price (''CEP'') in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. For sales made by other respondents, as well as the remaining sales made by CMC, we used export price (''EP''), in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the CEP methodology was not indicated by other circumstances.

We calculated EP based on the FOB or CIF prices to unaffiliated purchasers, as appropriate. From these prices we deducted amounts, where appropriate, for foreign inland freight, international freight, and marine insurance. We valued the deductions for foreign inland freight using surrogate data (Indian freight costs). (We selected India as the surrogate country for the reasons explained in the ''Normal Value'' section of this notice, below.) When marine insurance and ocean freight were provided by PRC-owned companies, we valued the deductions using surrogate data (amounts charged by market-economy providers). However, when some or all of a specific company's ocean freight was provided directly by market economy companies and paid for in a market economy currency, we used the reported market economy ocean freight values for all U.S. sales made by that company.

We calculated CEP based on the delivered and duty paid prices from CMC's U.S. subsidiary to unaffiliated customers. We made deductions, where appropriate, from the starting price for CEP for foreign inland freight, international freight, marine insurance, U.S. inland freight, and customs duties. In accordance with section 772(d)(1) of the Act, we made further deductions for the following selling expenses that related to economic activity in the United States: credit expenses and indirect selling expenses, including inventory carrying costs. In accordance with section 772(d)(3) of the Act, we have deducted from the starting price an amount for profit.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value (''NV'') using a factors-of-production (''FOP'') methodology if: (1) the subject merchandise is exported from an NME country, and (2) the Department finds that the available information does not permit the calculation of NV under section 773(a) of the Act. We have no basis to determine that the available information would permit the calculation of NV using PRC prices or costs. Therefore, we calculated NV based on factors data in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Under the FOP methodology, we are required to value, to the extent possible, the NME producer's inputs in a market economy country that is at a comparable level of economic development and that is a significant producer of comparable merchandise. We chose India as the surrogate country on the basis of the criteria set out in 19 CFR 351.408(b). See the October 19, 2001, Memorandum to John Brinkmann from Jeff May ''Tapered Roller Bearings from the People's Republic of China: Nonmarket Economy Status and Surrogate Country Selection,'' and the July 1, 2002, Memorandum to Susan Kuhbach ''Selection of a Surrogate Country and Steel Value Sources'' (''*Steel Values Memorandum*'') for a further discussion of our surrogate selection. (Both memoranda are on file in the Department's Central Records Unit, which is located in Room B–099 of the main Department building (''CRU'').)

We used publicly available information on Indian imports and exports to India to value the various factors. Because some of the Indian import data was not contemporaneous with the POR, unless otherwise noted, we inflated the data to the POR using the Indian wholesale price index (''WPI'') published by the International Monetary Fund.

Pursuant to the Department's FOP methodology, we valued each respondent's reported factors of production by multiplying them by the values described below. For a complete description of the factor values used, *see* the Memorandum to Susan Kuhbach: ''Factors of Production Values Used for the Preliminary Results,'' dated July 1, 2002, which is on file in the Department's CRU.

1. **Steel Inputs**. For hot-rolled alloy steel bars used in the production of cups and cones, consistent with *TRBs XIII* and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of New Shipper Reviews, 67 FR 10665 (March 8, 2002) (''*TRBs 2000 NSR*''), we used an adjusted weighted-average of Japanese export values to India from the Japanese Harmonized Schedule (''HS'') category 7228.30.900 obtained from Official Japan Ministry of Finance statistics. We used this same value for the hot-rolled steel bar used in the production of spacers. For cold-rolled steel rods used in the production of rollers and for cold-rolled steel sheet used in the production of cages, we used Indian import data under Indian tariff subheadings 7228.5009 and 7209.1600, respectively, obtained from the *Monthly Statistics of the Foreign Trade of India, Vol. II - Imports*. For

further discussion of selection of steel value sources, *see* the *Steel Values Memorandum*.

As in previous administrative reviews in this proceeding, we eliminated from our calculation steel imports from NME countries and imports from market economy countries that were made in small quantities. For steel used in the production of cups, cones, spacers, and rollers, we also excluded as necessary imports from countries that do not produce bearing-quality steel (*see*, *e.g.*, *TRBs XIII*). We made adjustments to include freight costs incurred using the shorter of the reported distances from either the closest PRC port to the TRBs factory or the domestic supplier to the TRBs factory. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997) and *Sigma Corporation v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997).

Certain producers in this review purchased steel used to make TRBs or TRB parts from market economy suppliers and paid for the steel with market economy currency. In accordance with 19 CFR 351.408(c)(1), we generally valued these steel inputs using the actual price reported for directly imported inputs from a market economy. However, in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Notice of Intent to Revoke Order in Part*, 66 FR 1953 (January 10, 2001) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of 1998–1999 Administrative Review and Determination to Revoke Order in Part*, 66 FR 11562 (February 26, 2001) (collectively, ''*TRBs XII*'') and *TRBs XIII*, we found a reasonable basis to believe or suspect that certain market economy steel inputs purchased by PRC TRBs manufacturers and used to manufacture TRBs were subsidized. Consistent with our treatment of subsidized inputs in *TRBs XII* and *TRBs XIII*, we have not used the actual prices paid by PRC producers of TRBs for steel which we have continuing reason to believe or suspect is subsidized. Instead, we relied on surrogate values. (*See* individual company calculation memoranda for a more detailed company-specific discussion of this issue.)

We valued scrap recovered from the production of cups, cones, rollers, and spacers using Indian import statistics from Indian HS category 7204.2909. Scrap recovered from the production of cages was valued using import data from Indian HS category 7204.4100.

2. **Labor**. 19 CFR 351.408(c)(3) requires the use of a regression-based wage rate. We have used the regression-based wage rate available on Import Administration's internet website at www.ia.ita.doc.gov/wages.

3. **Overhead, SG&A Expenses, and Profit**. For factory overhead, we used information obtained from the fiscal year 2000–2001 annual reports of five Indian bearing producers. We calculated factory overhead and selling, general, and administrative expenses as percentages of direct inputs and applied these ratios to each producer's direct input costs. These expenses were calculated exclusive of labor and electricity, but included employer provident funds and welfare expenses not reflected in the Department's regressed wage rate. This is consistent with the methodology we utilized in *TRBs XIII* and *TRBs 2000 NSR*. For profit, we totaled the reported profit before taxes for the five Indian bearing producers and divided by the total calculated cost of production (''COP'') of goods sold. This percentage was applied to each respondent's total COP to derive a company-specific profit value.

4. **Packing**. Consistent with our methodology in prior reviews (*see*, *e.g.*, *TRBs XIII*), we calculated packing costs as a percentage of COP for each respondent based on company-specific information submitted in previous reviews. This ratio was applied to each respondent's COP for the current review.

5. **Electricity**. We calculated our surrogate value for electricity based on electricity rate data from the *Energy Data Directory and Yearbook (1999/2000)* published by Tata Energy Research Institute. We calculated a simple average of the rates for the ''industrial'' category listed for 19 Indian states or electricity boards. We adjusted the electricity value to the POR using the Reserve Bank of India electricity-specific price index.

6. **Foreign Inland Freight**. We valued truck freight using an average of November 1999 truck freight rate quotes collected from Indian trucking companies by the Department and used in the *Final Determination of Sales at Less than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 33805 (May 25, 2000) (''*Bulk Aspirin from the PRC*'') and in past TRBs reviews (*see*, *e.g.*, *TRBs XIII* and *TRBs 2000 NSR*). We valued rail freight using two November 1999 rate quotes for domestic bearing quality steel shipments within India which were also used in *Bulk Aspirin from the PRC*. For inland freight expenses incurred by boat, we used August 1993 shipping freight data used in *Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 65 FR 31143 (May 16, 2000). We inflated these inland shipping rates to the POR using the Indian WPI.

7. **Ocean Freight**. We calculated a value for ocean freight based on December 2000 rate quotes from Maersk Sealand, Inc. Because this information is contemporaneous with the POR, no adjustments were necessary.

8. **Marine Insurance**. Consistent with *TRBs XIII* and *TRBs 2000 NSR*, we calculated a value for marine insurance based on the CIF value of shipped TRBs based on a rate obtained by the Department through queries made directly to an international marine insurance provider. We adjusted this marine insurance rate to the POR using the U.S. purchase price index.

9. **Brokerage and Handling**. We used the public version of a U.S. sales listing reported in the questionnaire response submitted by Meltroll Engineering for *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000). Because this information is not contemporaneous with the POR, we adjusted the data to the POR by using the Indian WPI.

Revocation

The Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, inter alia, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1).

Pursuant to 19 CFR 351.222(e)(1), Hailin, Wanxiang, and ZMC requested revocation of the antidumping duty order as it pertains to them. As noted above, Weihai also requested revocation of the antidumping duty order, in part, on this same basis. However, as we are rescinding this review with respect to Weihai, as discussed above, no further analysis is required with respect to partial revocation of the antidumping duty order as it pertains to Weihai.

According to 19 CFR 351.222(b)(2), upon receipt of such a request, the Department may revoke an order, in part, if it concludes that (1) the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) the continued application of the antidumping duty order is not otherwise necessary to offset dumping; and (3) the company has agreed to its immediate reinstatement in the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV.

With respect to ZMC, as noted below, we preliminarily find that a dumping margin exists for ZMC in the instant review. Moreover, in *TRBs XII*, ZMC was found to have made sales below NV. Because ZMC does not have three consecutive years of sales at not less than NV, we preliminarily find that ZMC does not qualify for revocation of the order on TRBs pursuant to 19 CFR 351.222(b).

As for Wanxiang, in *TRBs XII* and *TRBs XIII*, we determined that Wanxiang did not qualify for revocation because it did not sell the subject merchandise in the United States in commercial quantities in each of the three years underlying its request for revocation, specifically *TRBs XII*. In the instant review, based on our previous determination that Wanxiang did not make sales in commercial quantities during at least one of the three years forming the basis of the revocation request, *TRBs XII*, we do not need to examine whether Wanxiang made sales in commercial quantities in either of the other two years underlying Wanxiang's request for revocation. Thus, because Wanxiang did not make sales in commercial quantities in each of the three years cited by the company to support its revocation request, we preliminarily find that Wanxiang does not qualify for revocation of the order on TRBs pursuant to 19 CFR 351.222(b).

Finally, with respect to Hailin, Hailin sold the subject merchandise at not less than NV for a period of at least three consecutive years. Hailin has also agreed in writing to the immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that Hailin, subsequent to the revocation, sold the subject merchandise at less than NV. Finally, based on our examination of the sales data submitted by Hailin (see Hailin's July 1, 2002, preliminary results calculation memorandum, which is on file in the Department's CRU, for our commercial quantities analysis with respect to this data), we preliminarily determine that Hailin sold the subject merchandise in the United States in commercial quantities in each of the three years cited by Hailin to support its request for revocation. Therefore, based on the above facts, and absent evidence on the record that the continued application of the antidumping order is otherwise necessary to offset dumping from Hailin, we preliminarily determine that Hailin qualifies for revocation of the order on TRBs pursuant to 19 CFR 351.222(b)(2), and that the order with respect to merchandise produced and exported by Hailin should be revoked.

Preliminary Results of the Review

We preliminarily determine that the following dumping margins exist for the period June 1, 2000, through May 31, 2001:

Exporter/manufacturer	Weighted-average margin percentage
China National ..... Machinery Import ..... & Export Corporation	0.67
Wanxiang Group ..... Corporation	0.00
Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory	0.00
Luoyang Bearing ..... Corporation (Group)	0.05 (*de minimis*)
Zhejiang Machinery ..... Import & Export Corp.	0.55
PRC-wide rate	33.18

Any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held approximately 42 days after the publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. To calculate the amount of duties to be assessed with respect to EP sales, we divided the total dumping margins (calculated as the difference between NV and EP) for each importer/customer by the total number of units sold to that importer/customer. If these preliminary results are adopted in our final results of administrative review, we will direct the Customs Service to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the order during the review period.

For CEP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer/customer. If these preliminary results are adopted in our final results of administrative review, we will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's/customer's entries during the review period.

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the PRC companies named above, the cash deposit rates will be the rates for these firms established in the final results of this review, except that, for exporters with de minimis rates, i.e., less than 0.50 percent, no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 33.18 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit

requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 1, 2002

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration

[FR Doc. 02–17033 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1235]

Expansion of Foreign-Trade Zone 143, Sacramento, California Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Sacramento-Yolo Port District, grantee of Foreign-Trade Zone 143, submitted an application to the Board for authority to expand FTZ 143 to include a new site (Site 4) at the McClellan Park (the former McClellan Air Force Base) in the San Francisco Customs port of entry area (FTZ Docket 2–2002; filed 1/7/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 1959, 1/15/02) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 143 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 27th day of June 2002.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–17031 Filed 7–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No.1234]

Grant of Authority for Subzone Status, Mitsubishi Power Systems, Inc. (Power Generation Turbine Components), Orlando, FL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Greater Orlando Aviation Authority, grantee of Foreign-Trade Zone 42, has made application for authority to establish special-purpose subzone status at the power generation turbine components repair/manufacturing plant of Mitsubishi Power Systems, Inc., located in Orlando, Florida (FTZ Docket 45–2001, filed 1–6–2001);

Whereas, notice inviting public comment was given in the **Federal Register** (66 FR 57032, 11–14–2001); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the power generation turbine components repair/manufacturing plant of Mitsubishi Power Systems, Inc., located in Orlando, Florida (Subzone 42A), at the location described in the application, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 27th day of July, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. 02–17030 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1236]

Expansion of Foreign-Trade Zone 35, Philadelphia, Pennsylvania Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Philadelphia Regional Port Authority, grantee of Foreign-Trade Zone 35, submitted an application to the Board for authority to expand FTZ status to a site (66 acres) at the Fort Washington Exposition Center located in Fort Washington, Pennsylvania (Site 9), adjacent to the Philadelphia Customs port of entry (FTZ Docket 35–2001; filed 8/28/01);

Whereas, notice inviting public comment was given in the **Federal Register** (66 FR 46599, 9/6/01) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 35 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 27th day of June 2002.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–17032 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems, Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on July 24 & 25, 2002, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Business and Security on technical questions that affect the level of export controls applicable to information systems equipment and technology.

July 24

Public Session

1. Comments or presentations by the public.
2. Presentation on encryption in network management software.
3. Presentation on changes to the mass-market encryption regulation.
4. Discussion of GAO report on advances in China's semiconductor industry.

July 24 & 25

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, U.S. Department of Commerce, 15th St. & Pennsylvania Ave, NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 7, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. For more information, contact Lee Ann Carpenter on 202–482–2583.

Dated: July 3, 2002.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 02–17094 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Final Results of Expedited Sunset Review: Certain Concrete Reinforcing Bars from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Reviews: Certain Concrete Reinforcing Bars from Turkey.

SUMMARY: On March 1, 2002, the Department of Commerce (''the Department'') published the notice of initiation of a five-year sunset review of the antidumping duty order on reinforcing bars (''REBAR'') from Turkey, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1] On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties, and inadequate response (in this case no response) from respondent interested parties, the Department determined to conduct an expedited sunset review of this antidumping duty order. As a result of this review, the Department finds that revocation of the antidumping order would be likely lead to continuation or recurrence of dumping at the levels indicated in the ''*Final Results of Review*'' section of this notice.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Jr., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–3330.

SUPPLEMENTARY INFORMATION:

Statute and Regulations:

This review is conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (''*Sunset Regulations*'') and in 19 CFR Part 351 (2001) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3 *Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope of Review:

The product covered by this order is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed REBAR rolled from billet steel, rail steel, axle steel, or low- alloy steel. It excludes: (i) plain round REBAR, (ii) REBAR that a processor has further worked or fabricated, and (iii) all coated REBAR. Deformed REBAR is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Background:

On March 1, 2002, the Department published the notice of initiation of the five-year sunset review of the antidumping duty order on REBAR from Turkey in accordance with section 751(c)(6)(A)(i) of the Tariff Act of 1930.[2] On March 18, 2002, the Department received a Notice of Intent to Participate on behalf of Ameristeel Corporation, Commercial Metals Company, Birmingham Steel Corporation, and Nucor Corporation (collectively, ''the domestic interested parties'') as

[1] *Notice of Initiation of Five Year ''Sunset'' Reviews*, 67 FR 9439 (March 1, 2002).

[2] *Notice of Initiation of Five Year ''Sunset'' Reviews*, 67 FR 9439 (March 1, 2002).

specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The domestic interested parties claim interested party status as a domestic producer of REBAR.[3]

On April 8, 2002, the Department received a complete substantive response from the domestic interested parties, as specified in the *Sunset Regulations* under section 351.218(d)(3)(i).[4]

The Department did not receive a substantive response from any respondent interested party in this proceeding. Consequently, pursuant to section 751(c)(3)(B) of the Act, and 19 CFR 351.218(e)(1)(ii)(C), the Department conducted an expedited (120 - day) sunset review of this order.

Analysis of Comments Received:

All issues raised by the domestic interested parties to this sunset review are addressed in the *Issues and Decision Memorandum* (''*Decision Memorandum*'') from Jeffrey A. May, Director, Office of Policy, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated July 1, 2002, which is adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the Department's main building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn, under the heading ''July 2002.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review:

We determine that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/producers/exporter	Weighted-Average Margin (percent)
Colakoglu Metalurji A.S. or Colakoglu Dis Ticaret (Colakoglu)	9.84
Ekinciler Demir Celik or Ekinciler Dis Ticaret (Ekinciler)	18.68
Habas Sinai Ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas)	18.54
Izmir Demir Celik Sanayi A.S. (IDC)	41.80
Izmir Metalurji Fabrikasi Turk A.S. (Metas)	30.16
All Others	16.06

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation which is subject to sanction.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 1, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–17194 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Final Results of Expedited Sunset Review: Brake Rotors from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Reviews: Brake Rotors from the People's Republic of China.

SUMMARY: On March 1, 2002, the Department of Commerce (''the Department'') published the notice of initiation of a five-year sunset review of the antidumping duty order on brake rotors from the People's Republic of China (''PRC'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1] On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties, and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited sunset review of this antidumping duty order. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels listed below in the ''*Final Results of Review*'' section of this notice.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Jr., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations:

This review is conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''), and in 19 CFR Part 351 (2001) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of

[3] Ameristeel was one of the two petitioners in the original investigation. Ameristeel has participated in all administrative reviews conducted by the Department since the issuance of this antidumping duty order. The domestic interested parties note they are participants in the Department's third administrative review.

[4] On March 28, 2002, the Department received request from domestic interested parties for extension of time limits to file a substantive response in this proceeding. The Department granted the extension to the domestic interested parties and all participants eligible to file responses until April 8, 2002.

[1] *Notice of Initiation of Five Year ''Sunset'' Reviews,* 67 FR 9439 (March 1, 2002).

sunset reviews is set forth in the Department's Policy Bulletin 98:3 *Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope of Review

The product covered by this antidumping duty order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (''OEM'') which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in the order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of the order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are currently classifiable under subheading 8708.39.50.10 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Background

On March 1, 2002, the Department published the notice of initiation the five-year sunset review of the antidumping duty order on brake rotors from the PRC in accordance with section 751(c) of the Act.[2] On March 18, 2002 the Department received a Notice of Intent to Participate on behalf of the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers (collectively, ''the domestic interested parties'')[3] as specified in section 351.218(d)(1)(i) of the Sunset Regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act.

On April 1, 2002, the Department received a complete substantive response from the domestic interested parties, as specified in the *Sunset Regulations* under section 351.218(d)(3)(i). The Department did not receive a substantive response from any respondent interested party in the proceeding. Consequently, pursuant to section 751(c)(3)(B) of the Act, and 19 CFR 351.218(e)(1)(ii)(C), on April 10, 2002, the Department notified the International Trade Commission (''Commission'') that we were conducting an expedited sunset review (120 - day) of the antidumping duty order.

Analysis of Comments Received

All issues raised by the domestic interested parties to this sunset review are addressed in the *Issues and Decision Memorandum* (''*Decision Memorandum*'') from Jeffrey A. May, Director, Office of Policy, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated July 1, 2002, which is adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the Department's main building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn, under the heading ''July 2002.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on brake rotors from the PRC would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Exporter/Manufacturer/Producers	Weighted-Average Margin (percent)
China National Automotive Industry Import & Export Corporation (''CAIEC'') and Shandong Laizhou CAPCO ..... Industry (''Laizhou CAPCO'') / CAIEC and Laizhou CAPCO	Excluded
Shenyang Honbase Machinery Co., Ltd. (''Shenyang Honbase'') and Lai Zhou Luyuan Automobile Fittings Co., Ltd. (''Laizhou Luyuan'')	Excluded
China National Machinery and Equipment Import & Export (''Xinjiang'') Corporation, Ltd. (''Xinjiang'')/ Zibo Botai Manufacturing Co., Ltd. (''Zibo'')	Excluded
Yantai Import & Export Corporation (''Yantai'')	3.56
Southwest Technical Import & Export Corporation (''Southwest''),Yangtze Machinery Corporation, and MMB International, Inc.	16.07
Hebei Metals and Minerals Import & Export Corporation (''Hebei'')	8.51
Jilin Provincial Machinery & Equipment Import & Export Corporation (''Jilin'')	8.51
Shandong Jiuyang Enterprise Corporation (''Jiuyang'')	8.51
Longjing Walking Tractor Works Foreign Trade Import & Export Corporation (''Longjing'')	8.51
Qingdao Metals, Minerals & Machinery Import & Export Corporation (''Qingdao'')	8.51
Shanxi Machinery and Equipment Import & Export Corporation (''Shanxi'')	8.51
Xianghe Zichen Casting Corporation, Ltd (''Xianghe'')	8.51

[2] *Antidumping and Countervailing Duties: Five Year Reviews*, (67 FR 9439) March 1, 2002

[3] Although the Coalition's membership has changed, current members include: Dana Corporation, Brake and Chassis Division (formerly Brake Parts, Inc.); and Federal Mogul Corporation (successor to Wagner Brake Corporation/Moog and Waupaca foundry, Inc.). Brake Parts, Inc. and Wagner Brakes have undergone corporate reorganization and are now known as Dana Corporation and Federal Mogul, Inc.

Exporter/Manufacturer/Producers	Weighted-Average Margin (percent)
Yenhere Corporation (''Yenhere)	8.51
All Others	43.32

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 1, 2002.

Joseph A.Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–17195 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–806]

Notice of Antidumping Duty Order: IQF Red Raspberries From Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Cole Kyle or Blanche Ziv, (202) 482–1503 or (202) 482–4207, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to 19 CFR part 351 (April 2001).

Scope of Order

The products covered by this order are imports of IQF whole or broken red raspberries from Chile, with or without the addition of sugar or syrup, regardless of variety, grade, size or horticulture method (*e.g.,* organic or not), the size of the container in which packed, or the method of packing. The scope of the order excludes fresh red raspberries and block frozen red raspberries (*i.e.,* puree, straight pack, juice stock, and juice concentrate).

The merchandise subject to this order is classifiable under section 0811.20.2020 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Antidumping Duty Order

In accordance with section 735(d) of the Act, the Department published its final determination that IQF red raspberries from Chile are being, or are likely to be, sold in the United States at less than fair value (''LTFV''). *See Notice of Final Determination of Sales at Less Than Fair Value: IQF Red Raspberries from Chile,* 67 FR 35790 (May 21, 2002). Subsequently, the Department amended its final determination of the antidumping duty investigation of IQF red raspberries from Chile to correct a ministerial error in the final margin calculation for one respondent. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: IQF Red Raspberries from Chile,* 67 FR 40270 (June 12, 2002). On July 2, 2002, the International Trade Commission notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of LTFV imports of subject merchandise from Chile.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise for all relevant entries of IQF red raspberries from Chile, except for subject merchandise produced and exported by Exportadora Frucol and Comercial Fruticola, which received zero and de minimis final margins, respectively. For all producers and exporters, with the exception of Exportadora Frucol and Comercial Fruticola, antidumping duties will be assessed on all unliquidated entries of imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after December 31, 2001, the date on which the Department published its notice of affirmative preliminary determination in the **Federal Register**. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: IQF Red Raspberries From Chile,* 66 FR 67510 (December 31, 2001).

On or after the date of publication of this notice in the **Federal Register**, Customs Service officers must require, at the same time that importers deposit estimated normal customs duties, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The ''All Others'' rate applies to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

Exporter/Manfacturer	Weighted-average margin percentage
Comercial Fruticola	(1)
Exportadora Frucol	(1)
Fruticola Olmue	6.33
All Others	6.33

[1] Excluded.

This notice constitutes the antidumping duty order with respect to IQF red raspberries from Chile, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Department building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: July 3, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–17199 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–503]

Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review: Iron Construction Castings From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has received information sufficient to warrant initiation of a changed circumstances administrative review of the antidumping duty order on iron construction castings from Canada. Based on this information, we preliminarily determine that the Laperle foundry, Grand Mere foundry, and Bibby Ste Croix foundry, which were owned by various legal entities named as respondents in prior segments of this proceeding, are now all part of the Bibby Ste-Croix Division of Canada Pipe Company, Ltd. (Canada Pipe) and that the merchandise from these foundries should receive the same antidumping duty rate as the rate applied to Canada Pipe Company, Ltd. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Howard Smith, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4081 and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (April 2002).

Background

On April 12, 2001, the Department published in the **Federal Register** (66 FR 18900) the final results of the antidumping duty administrative review on iron construction castings from Canada covering the period March 1, 1999 through February 29, 2000 (99–00 administrative review). Canada Pipe was the sole respondent in the 99–00 administrative review. On May 10, 2002, Canada Pipe submitted a written request that the Department clarify for the U.S. Customs Service (possibly in the context of a changed circumstances review) that the weighted-average margin calculated in the 99–00 administrative review applies to Canada Pipe's unincorporated plants (or foundries) that have ''Bibby Ste-Croix,'' ''Laperle,'' ''Grand Mere,'' or simply ''Bibby'' in their names.

Scope of Review

The merchandise covered by this review consists of certain iron construction castings from Canada, limited to manhole covers, rings, and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under Harmonized Tariff Schedule (HTS) item number 7325.10.0010. The HTS item number is provided for convenience and Customs purposes only. The written description remains dispositive.

Initiation and Preliminary Results of Review

In its May 10, 2002 submission to the Department, Canada Pipe explained that questions have arisen on the part of the U.S. Customs Service (U.S. Customs) as to whether subject merchandise produced by certain Canada Pipe foundries is entitled to the antidumping margin calculated for Canada Pipe in the 99–00 administrative review. Specifically, questions arose regarding Canada Pipe's foundries that have ''Bibby,'' ''Bibby Ste-Croix,'' ''Laperle,'' or ''Grand Mere'' in their names because these foundries were owned by entities that had received individual antidumping duty margins in prior segments of the proceeding on iron construction castings from Canada. In its May 10, 2002 submission, Canada Pipe notes that it did not start producing the subject merchandise until April 1997, when it acquired the assets and trademarks of these castings foundries from an unrelated entity. Further, Canada Pipe notes that during the 99–00 administrative review, it operated these foundries, Fonderie Bibby Ste-Croix, Fonderie Laperle, and Fonderie Grand Mere,[1] as unincorporated foundries within its Bibby Ste-Croix Division. However, because Canada Pipe continues to use these foundry names, or references thereto, on sales and Customs entry documentation, U.S. Customs has continued to apply the antidumping duty deposit rates assigned to these foundries in prior segments of this proceeding to entries of Canada Pipe's subject merchandise.

Thus, in accordance with section 751(b) of the Act and sections 351.216 and 351.221(a) of the Department's regulations, the Department is initiating a changed circumstances review to determine whether the unincorporated Bibby Ste-Croix, Laperle, and Grand Mere foundries identified as part of Canada Pipe's Bibby Ste-Croix Division are the foundries that were owned by various legal entities named as respondents in prior segments of this proceeding and whether Canada Pipe was the legal entity that owned these foundries during the 99–00 administrative review.

Canada Pipe has presented evidence to establish a prima facie case supporting its status as the sole owner of the Laperle, Grand Mere and Bibby Ste Croix foundries that were involved in a number of segments of this proceeding prior to the 99–00 administrative review. Moreover, the Department has examined the record of all of the proceeding segments prior to the 99–00 administrative review and found evidence which supports the information that Canada Pipe submitted in its May 20, 2002 request for this changed circumstances review. Finally, the Department notes that its examination of Canada Pipe during the 99–00 administrative review encompassed the entire company, including the Bibby Ste-Croix Division and all of its heavy castings foundries, Bibby Ste-Croix, Laperle, and Grand Mere—(*i.e.,* the Canadian Pipe dumping margin calculated in that review was based on the combined sales of all of these foundries). As a consequence, we find that it is appropriate to issue the preliminary results of our review in combination with the notice of initiation of the changed circumstances review in accordance with section 351.221(c)(3)(ii) of the Department's regulations. Because the evidence indicates that Canada Pipe is the sole owner of the unincorporated Bibby Ste Croix Division, we preliminarily determine that Canada Pipe's Bibby Ste Croix Division and its Bibby Ste Croix Foundry, Laperle Foundry, Grand Mere Foundry should be given the same antidumping duty treatment as Canada Pipe, including Canada Pipe's 3.84 percent antidumping duty cash deposit rate established in the 99–00 administrative review based on

[1] These are the Canadian French versions of the foundry names.

production and sales by all of these foundries. For further discussion of this issue, see the memorandum from Holly A. Kuga to Bernard T. Carreau, dated concurrently with this notice, regarding Iron Constructing Castings from Canada: Changed Circumstances Review.

Because the Department reviewed sales of Canada Pipe, including its Bibby Ste Croix Division, in the 99–00 administrative review, the cash deposit rate from that review will apply to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after April 12, 2001, the date of publication of the final results in the 99–00 administrative review. This deposit rate shall remain in effect until publication of the final results of the next relevant administrative review.

Interested parties are invited to comment on these preliminary results. Any written comments may be submitted no later than 14 days after date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, are due five days after the case brief deadline. Case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.209. The Department will publish the final results of the changed circumstances review including the results of its analysis of any issues raised in any such comments.

This initiation of review, preliminary results of review, and notice are in accordance with sections 751(b) and 777(i)(1) of the Act.

Dated: June 24, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–17200 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Preliminary Results of 1999–2001 Administrative Review and Partial Rescission of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of 1999–2001 Administrative Review, Partial Rescission of Review.

SUMMARY: We preliminarily determine that sales of certain non-frozen apple juice concentrate from the People's Republic of China were made below normal value during the period November 23, 1999 through May 31, 2001. If these preliminary results are adopted in our final results of review, we will instruct the Customs Service to assess antidumping duties based on the difference between export price or constructed export price and normal value on all appropriate entries. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Craig Matney or John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1778 or (202) 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351 (April 2001).

Background

On June 5, 2000, the Department published in the **Federal Register** (65 FR 35606) the antidumping duty order on certain non-frozen apple juice concentrate from the People's Republic of China (''PRC''). On June 11, 2001, the Department notified interested parties of the opportunity to request an administrative review of this order (66 FR 31203). On June 21, 2001, Shaanxi Gold Peter Natural Drink Co., Ltd. (''Gold Peter'') requested an administrative review. On June 22, 2001, Qingdao Nannan Foods Co., Ltd. (''Nannan''), Shaanxi Haisheng Fresh Fruit Juice Co., Ltd. (''Haisheng''), Shaanxi Hengxing Fruit Juice Co., Ltd. (''Hengxing''), Shaanxi Machinery and Equipment Import and Export Corporation (''SAAME''), Shandong ZhongLu Juice Group Co., Ltd. (''ZhongLu''), Xian Asia Qin Fruit Co., Ltd. (''Xian Asia''), and Yantai Oriental Juice Co., Ltd. (''Oriental'') (collectively ''Nannan *et al.*'') also requested administrative reviews. On June 28, 2001, Sanmenxia Lakeside Fruit Juice Co., Ltd. (''Lakeside'') requested an administrative review. On June 29, 2001, Coloma Frozen Foods, Inc., Green Valley Packers, Knouse Foods Cooperative, Inc., Mason County Fruit Packers Co-op, Inc., and Tree Top, Inc., (''the petitioners''), requested that, in addition to the above-mentioned requests, the Department conduct an administrative review of the antidumping order for Xian Yang Fuan Juice Co., Ltd. (''Xian Yang''), Changsha Industrial Products & Minerals Import and Export Co., Ltd. (''Changsha''), and Shandong Foodstuffs Import and Export Corporation (''Shandong''). In accordance with 19 CFR 351.221(b)(1), on July 23, 2001, we published a notice of initiation of this antidumping duty administrative review (66 FR 38252).

On November 14, 2001, the Department sent a letter to the Chinese Chamber of Commerce for the Import and Export of Foodstuffs, Native Produce & Animal By-Products (''China Chamber''), with a copy to the Embassy of the PRC in the United States, requesting that the China Chamber forward the questionnaire to the companies named in the initiation notice.

On December 18, 2001, Xian Yang reported that it had no shipments of subject merchandise to the United States during the November 23, 1999, through May 31, 2001, period of review (''POR''). See ''*Partial Rescission*'' section, below. In December 2001 and January 2002, we received responses to the questionnaire from the following companies: Gold Peter, Haisheng, Hengxing, Lakeside, Nannan, Oriental, SAAME, Xian Asia, and ZhongLu. Shandong's response was received by the Department in March 2002. Changsha did not respond to the Department's original questionnaire. See ''*Use of Fact Otherwise Available*'' section, below.

In December 2001, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production. We received responses from Nannan *et al.* on February 11, 2002, and from Lakeside on February 12, 2002. The petitioners provided surrogate value information to the Department on March 5, 2002.

On February 7, 2002, in accordance with section 751(a)(3)(A) of the Act, the Department found that it was not practicable to complete the review in the time allotted, and extended the time limit for the completion of the preliminary results in this case by 60 days (i.e., until no later than May 1, 2002) (67 FR 5788).

In February and March 2002, we sent out supplemental questionnaires to Gold Peter, Lakeside, and Nannan *et al.*,

and received responses to these supplemental questionnaires in March 2002. In April and May 2002, the Department issued supplemental questionnaires to and received responses from Shandong.

On May 1, 2002, in accordance with section 751(a)(3)(A) of the Act, the Department extended the time limit for the completion of the preliminary results in this case by an additional 60 days, (*i.e.*, until no later than July 1, 2002) (67 FR 21633).

Scope of the Order

The product covered by this order is certain non-frozen apple juice concentrate (''NFAJC''). Certain NFAJC is defined as all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this order are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings 2009.70.00.20 and 2106.90.52. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Partial Rescission

In accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding this review with respect to Xian Yang, which reported that it made no shipments of subject merchandise during this POR. We examined shipment data furnished by the Customs Service and are satisfied that the record does not indicate that there were U.S. entries of subject merchandise from Xian Yang during the POR.

Verification

As provided in section 782(i) of the Act, in May 2002 we verified information provided by Haisheng, Hengxing, and Xian Asia using standard verification procedures, including onsite inspection of manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information.

Separate Rates Determination

The Department has treated the PRC as a nonmarket economy (''NME'') country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding have contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC NFAJC industry is a market-oriented industry.

Therefore, we are treating the PRC as an NME country within the meaning of section 773(c) of the Act. We allow companies in NME countries to receive separate antidumping duty rates for purposes of assessment and cash deposits when those companies can demonstrate an absence of government control, both in law and in fact, with respect to export activities.

To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

Absence of *De Jure* Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies.

The ten participating respondents have placed a number of documents on the record to demonstrate absence of *de jure* government control, including ''Foreign Trade Law of the People's Republic of China'' (''Foreign Trade Law''), ''Company Law of the PRC'' (''Company Law''), the ''Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations'' (''Administrative Regulations''), the ''Law of the People's Republic of China on Chinese-Foreign Cooperative Joint Ventures'' (''Joint Ventures Law''), and the ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People'' (''Industrial Enterprises Law''). The Foreign Trade Law grants autonomy to foreign trade operators in management decisions and establishes accountability for their own profits and losses. In prior cases, the Department has analyzed the Foreign Trade Law and found that it establishes an absence of *de jure* control. (*See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571 (June 5, 1995); *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998) (''*Mushrooms*'')). We have no new information in this proceeding which would cause us to reconsider this determination.

The Company Law is designed to meet the PRC's needs of establishing a modern enterprise system, and to maintain social and economic order. The Department has noted that the Company Law supports an absence of *de jure* control because of its emphasis on the responsibility of each company for its own profits and losses, thereby decentralizing control of companies.

In keeping with the Company Law, the Administrative Regulations safeguard social and economic order, as well as establishing an administrative system for the registration of corporations. The Department has reviewed the Administrative Regulations and concluded that they show an absence of *de jure* control by requiring companies to bear civil liabilities independently, thereby decentralizing control of companies.

The Joint Ventures Law states that Chinese and foreign parties shall share earnings and bear risks jointly. An analysis of the Joint Ventures Law by the Department further indicates lack of de jure control for Oriental, Xian Asia, and ZhongLu, those respondents actually subject to this law.

The Industrial Enterprises Law provides that enterprises owned by ''the whole people'' shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers, and purchase their own goods and materials. As in prior PRC cases, the Department has analyzed the Industrial Enterprises Law and found that this law establishes mechanisms for private control of companies, which indicates an absence of *de jure* control. *See Pure Magnesium from the People's Republic off China:*

Final Results of New Shipper Review, 63 FR 3085, 3086 (January 21, 1998).

According to the respondents, NFAJC exports are not affected by quota allocations or export license requirements. The Department has examined the record in this case and does not find any evidence that NFAJC exports are affected by quota allocations or export license requirements. By contrast, the evidence on the record demonstrates that the producers/exporters have the autonomy to set the price at whatever level they wish through independent price negotiations with their foreign customers and without government interference.

Accordingly, we preliminarily determine that there is an absence of *de jure* government control over export pricing and marketing decisions of the respondents.

Absence of *De Facto* Control

De facto absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; 4) whether each exporter has autonomy from the government regarding the selection of management (*see Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589).

As stated in previous cases, there is evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (*See Mushrooms*, 63 FR at 72255). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department has reviewed the record in this case and notes that each respondent: (1) establishes its own export prices; (2) negotiates contracts without guidance from any governmental entities or organizations; (3) makes its own personnel decisions; (4) retains the proceeds from export sales and uses profits according to its business needs without any restrictions; and (5) does not coordinate or consult with other exporters regarding pricing decisions.

The information on the record supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of these companies. Consequently, we preliminarily determine that all responding exporters have met the criteria for the application of separate rates.

Changsha did not submit a response to the Department's antidumping duty questionnaire, including the separate rates section. We therefore preliminarily determine that Changsha did not establish its entitlement to a separate rate in this review and, therefore, is presumed to be part of the PRC NME entity and, as such, is subject to the PRC country-wide rate. *See* the ''*Use of Facts Otherwise Available*'' section, below.

PRC-Wide Rate and Use of Facts Otherwise Available

As noted above, Changsha is appropriately considered part of the PRC-wide entity. This entity did not respond to the Department's questionnaire. Section 776(a)(2) of the Act provides that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Because the PRC entity did not respond to the Department's questionnaire, we find that, in accordance with sections 776(a)(2)(A) and (C) of the Act, the use of total facts available is appropriate (*see, e.g., Final Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 50183, 50184 (August 17, 2000) (for a more detailed discussion, *see Preliminary Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 40609, 40610–40611 (June 30, 2000)); *Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from the People's Republic of China*, 62 FR 27222, 27224 (May 19, 1997); and *Certain Grain-Oriented Electrical Steel from Italy: Final Results of Antidumping Duty Administrative Review*, 62 FR 2655 (January 17, 1997) (for a more detailed discussion, *see Preliminary Results of Antidumping Duty Administrative Review: Certain Grain-Oriented Electrical Steel from Italy*, 61 FR 36551, 36552 (July 4, 1996)). Because the PRC entity provided no information, sections 782(d) and (e) are not relevant to our analysis.

Section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (''SAA'') accompanying the URAA, H.R. Doc. No. 103–316, at 870 (1994).

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the less-than-fair-value (''LTFV'') investigation, a previous administrative review, or any other information placed on the record. Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a ''full explanation and suggested alternative forms.'' On November 14, 2001, the Department transmitted its questionnaire to Changsha via priority mail. We confirmed with the delivery company that this transmission was received and signed for by Changsha personnel on November 19, 2001. Changsha did not submit a response to our questionnaire by the deadline established for such submissions. On March 27, 2002, the Department wrote to Changsha via e-mail asking whether the company had received the November 14, 2001, questionnaire, and whether it had, in fact, decided not to comply with our requests for information. On March 31, 2002, the Department made a similar inquiry via facsimile. The Department received no responses from Changsha personnel to either the e-mail or the facsimile. Therefore, we determine that the PRC entity failed to cooperate to the best of its ability, making the use of an adverse inference appropriate.

In this proceeding, in accordance with Department practice (s*ee, e.g., Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review: Brake Rotors*

From the People's Republic of China, 64 FR 61581, 61584 (November 12, 1999); *Preliminary Results of Antidumping Duty Administrative Review: Fresh Garlic From the People's Republic of China*, 64 FR 39115 (July 21, 1999); and *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 65 FR 33295 (May 23, 2000) (for a more detailed discussion, *see Preliminary Results of Antidumping Duty Administrative Review: Fresh Garlic From the People's Republic of China*, 64 FR 39115 (July 21, 1999)), as adverse facts available, we have preliminarily assigned to the PRC entity (which includes Changsha) the PRC-wide rate of 51.74 percent, which is the PRC-wide rate established in the LTFV investigation (*see Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China*, 65 FR 19873 (April 13, 2000) (''*Final Determination*'')) and the highest dumping margin determined in any segment of this proceeding. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870. The SAA states that ''corroborate'' means to determine that the information used has probative value (*id.*). To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. To examine the reliability of margins in the petition, we examine whether, based on available evidence, those margins reasonably reflect a level of dumping that may have occurred during the period of investigation by any firm, including those that did not provide us with usable information. This procedure generally consists of examining, to the extent practicable, whether the significant elements used to derive the petition margins, or the resulting margins, are supported by independent sources. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be relevant, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Final Results of Antidumping Duty Administrative Review: Fresh Cut Flowers from Mexico*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). We have determined that there is no evidence on the record which would render the application of the petition margin inappropriate. Therefore, we consider the petition information relevant for this proceeding.

Furthermore, in the underlying LTFV investigation, we established the reliability of the petition margin (see Final Determination). As there is no information on the record of this review that demonstrates that the petition rate is not reliable for use as the adverse facts available rate for the PRC-wide rate, we determine that this rate has probative value and, therefore, is an appropriate basis for the PRC- wide rate to be applied in this review to exports of subject merchandise by the PRC entity (which includes Changsha).

Export Price and Constructed Export Price

For certain sales made by Haisheng, ZhongLu, Oriental, and Xian Asia, and all sales made by Shandong to the United States, we used constructed export price (''CEP'') in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. For sales made by nine of the participating respondents (excluding Shandong, and including certain sales made by Haisheng, Oriental, Xian Asia, and ZhongLu), we used export price (''EP''), in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the CEP methodology was not warranted by other circumstances.

We calculated EP based on the CIF, C&F, CFR, FOB, and delivered prices to unaffiliated purchasers, as appropriate. In accordance with section 772(c) of the Act, we deducted from these prices, where appropriate, amounts for foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, other U.S. transportation expense, U.S. customs duty (including merchandise processing and harbor maintenance fees), and U.S. warehousing. We valued the deductions for foreign inland freight and brokerage and handling using surrogate data, which were based on Indian freight costs. (We selected India as the surrogate country for the reasons explained in the ''*Normal Value*'' section of this notice, below.) When marine insurance and ocean freight were provided by PRC-owned companies, we valued the deductions using surrogate value data (amounts charged by market-economy providers). However, when some or all of a specific company's ocean freight or marine insurance was provided directly by market economy companies and paid for in a market economy currency, we used the reported market economy ocean freight or marine insurance values for all U.S. sales made by that company. *See* 19 CFR 351.408(c)(1).

We calculated CEP based on the ex-dock (PRC), ex-dock (USA), CIF, DDP (delivered duty paid), and delivered prices from Haisheng, ZhongLu, Oriental, Shandong and Xian Asia's U.S. subsidiaries to unaffiliated customers. In accordance with section 772(c) of the Act, we deducted from the starting price for CEP amounts for foreign inland freight, foreign inland insurance, international freight, marine insurance, U.S. inland freight, other U.S. transportation expense, U.S. customs duty (including merchandise processing and harbor maintenance fees), U.S. brokerage and handling expense, U.S. freight forwarder fee, and U.S. warehousing expense.

In accordance with section 772(d)(1) of the Act, we made further deductions for the following selling expenses that related to economic activity in the United States: commissions, warranties, outside laboratory testing fees, drum relabeling expenses, credit expenses, indirect selling expenses (including inventory carrying costs), and other direct selling expenses. In accordance with section 772(d)(3) of the Act, we also deducted from the starting price an amount for profit.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value (''NV'') using a factors-of-production methodology if: (1) the subject merchandise is exported from an NME country, and (2) the Department finds that the available information does not permit the calculation of NV under section 773(a) of the Act. We have no basis to determine that the available information would permit the calculation of NV using PRC prices or costs. Therefore, we calculated NV based on factors data in accordance with section 773(c) of the Act and 19 CFR 351.408(c).

Under the factors-of-production methodology, we are required to value, to the extent possible, the NME producer's inputs in a market economy country that is at a comparable level of economic development and that is a significant producer of comparable merchandise. We chose India as the surrogate on the basis of the criteria set out in sections 773(c)(2)(B) and 773(c)(4) of the Act, and in 19 CFR 351.408(b). *See* the December 26, 2001, Memorandum to Susan Kuhbach from Jeff May ''1st Administrative Review of Non-Frozen Apple Juice Concentrate from the People's Republic of China,'' (''Surrogate Country Memo'') for a further discussion of our surrogate selection, which is on file in the Department's Central Records Unit in Room B–099 of the main Department building (''CRU''). *See also* the July 1, 2002, Memorandum to Susan Kuhbach from Team, ''Significant Production of Comparable Merchandise,'' which is also on file in the CRU.

We used publicly available information from India to value the various factors. Because some of the Indian import data was not contemporaneous with the POR, unless otherwise noted, we inflated the data to the POR using the Indian wholesale price indices (''WPI'') published by the International Monetary Fund.

Pursuant to the Department's factors-of-production methodology as provided in section 773(c) of the Act and 19 CFR 351.408(c), we valued the respondents' reported factors of production by multiplying them by the following values (for a complete description of the factor values used, see the Memorandum to Susan Kuhbach: ''Factors of Production Values Used for the Preliminary Results,'' dated July 1, 2002, which is on file in the CRU):

Juice Apples: We have preliminarily valued juice apples at the weighted average price paid for culled or processing grade apples in India, based on information in two articles from *The Tribune*, an Indian news source. These articles describe the price charged to the Himachal Pradesh Horticulture Produce Marketing and Processing Corporation (''the HPMC''), a state-owned fruit processing company, for apples procured under the Government of India's price support scheme for apple growers, as well as the prices obtained for the remaining apples (*i.e.*, apples that are not processed by the HPMC and are sold at auction). According to these articles, the HPMC pays rupees 2.25 per kilo for the apples it processes. The prices for the remaining apples ranged from rupees 0.6 to 2.50 per kilo. We weighted the prices paid by the HPMC and the average auction prices by the amounts of apples procured by the HPMC and the amounts sold at auction, respectively, with the result that the value of juice apples was rupees 1.34 per kilo. Because of the wide range of prices reported for auctioned apples, and because the information in the articles is not sufficiently detailed to allow us to know the amounts sold at the various prices, we are inviting parties to submit additional information regarding the prices of juice apples in India.

Processing Agents: We valued pectinex enzyme, amylase enzyme, bentonite, diatomite, gelatin, silica gel, and activated carbon using the *Monthly Statistics of the Foreign Trade of India, Volume II: Imports* (''Indian import statistics'') for the period January 2000 through May 2001.

Labor: Pursuant to section 351.408(c)(3) of the Department's regulations, we valued labor using the regression-based wage rate for the PRC published by Import Administration on its website.

Electricity and Coal: To value electricity, we used electricity rate data from the *Energy Data Directory &Yearbook (1999/2000)*. We determined that the most contemporaneous information on the record for coal could be derived from Indian import statistics. Prices for goods vary over time, and therefore contemporaneity is significant to our selection of an appropriate surrogate value. Therefore, we based the value of coal on Indian import statistics.

Factory Overhead, SG&A, and Profit: We derived ratios for factory overhead, SG&A, and profit, using 2000–01 data from the audited financial statements of Himalayan Vegefruit Ltd., identified in the investigation as an Indian producer of products the same as, and similar to, the subject merchandise.

Packing Materials: We calculated values for aseptic bags, plastic liners, labels, wood bins, steel corners, steel bolts, steel bands, steel clips, styrofoam padding, adhesive tape, nails, and cardboard boxes using Indian import statistics from the period January 2000 through May 2001. We converted values from a per kilogram to a per piece basis, where necessary.

For steel drums, we could not find a reliable Indian value. Therefore, we used a 1994 Indonesian price and inflated it using the Indonesian WPI.

Inland Freight Rates: To value truck freight rates, we used a July 2000 newspaper article from the *Indian Express Newspaper*. With regard to rail freight, we based our calculation on a price quote from the Northern Railway. We calculated an average per kilometer per metric ton rate.

International Freight: We used rates collected from the Federal Maritime Commission's Automated Tariff Filing Information (''AFTI'') database. Where an individual PRC producer/exporter used a market-economy shipper and paid for the shipping in a market-economy currency, and could provide the complete documentation of the transaction, we calculated an average price for shipping paid by that producer/exporter.

Marine Insurance: We used a June 1998 price quote from a U.S. insurance provider, as we have in past PRC cases. *See also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1996–97 Antidumping Duty Administrative Review and New Shipper Review and Determination Not To Revoke Order in Part*, 63 FR 63842 (November 17, 1998).

Brokerage and Handling: We used the public version of a U.S. sales listing reported in the questionnaire response submitted by Meltroll Engineering for *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000). Because this information is not contemporaneous with the POR, we adjusted the data to the POR by using the Indian WPI.

By-products: Certain respondents reported by-products resulting from production of the subject merchandise. For those respondents that reported their production of apple essence/aroma and/or apple pomace, we have offset the cost of materials with a by-product credit. The value for apple essence/aroma was calculated as a simple average of the various prices reported at the July 1999 ITC hearing and 1999 price quotes provided to the Department by two U.S. brokers of food products. Apple pomace was valued using an

April 2000 study published by the University of Georgia.

Preliminary Results of the Review

We preliminary determine that the following dumping margins exist for the period November 23, 1999, through May 31, 2001:

Exporter/manfacturer	Weighted-average margin percentage
Changsha Industrial Products & Minerals Import and Export Co., Ltd. (included in the PRC entity)	51.74
Qingdao Nannan Foods Co., Ltd.	0.00
Sanmenxia Lakeside Fruit Juice Co., Ltd.	0.00
Shaanxi Gold Peter Natural Drink Co., Ltd.	0.00
Shaanxi Haisheng Fresh Fruit Juice Co., Ltd.	0.00
Shaanxi Hengxing Fruit Juice Co. Ltd.	0.00
Shaanxi Machinery & Equipment Import & Export Corporation	0.00
Shandong Foodstuffs Import and Export Corporation	0.00
Shandong ZhongLu Juice Group Co. Ltd.	0.00
Xian Asia Qin Fruit Co., Ltd.	0.00
Yantai Oriental Juice Co., Ltd.	0.00
PRC-wide rate	51.74

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held approximately 42 days after the publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the case and rebuttal briefs. Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs within 30 days of the date of publication of this notice. Furthermore, as discussed in 19 CFR 351.309(d)(2), rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates and Cash Deposit Requirements

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the PRC companies named above, the cash deposit rates will be the rates for these firms established in the final results of this review, except that, for exporters with *de minimis* rates, *i.e.*, less than 0.50 percent, no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters (including Changsha), the rate will be the PRC country-wide rate, which is 51.74 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

DATED: July 1, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–17196 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results and Preliminary Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of the preliminary results and rescission in part of antidumping duty administrative review.

SUMMARY: In response to a request from respondent Ta Chen Stainless Pipe Co., Ltd. (''Ta Chen'') and from Markovitz Enterprises, Inc. (Flowline Division), Shaw Alloy Piping Products Inc., Gerlin, Inc., and Taylor Forge (''petitioners''), the Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. Specifically, the petitioners requested that the Department conduct the administrative review for Ta Chen Stainless Pipe Co., Ltd., Liang Feng Stainless Steel Fitting Co., Ltd. (''Liang Feng''), and Tru-Flow Industrial Co., Ltd. (''Tru-Flow''). This review covers Ta Chen, a manufacturer and exporter of the subject merchandise and Liang Feng and Tru-Flow, manufacturers of the subject merchandise. The period of review (''POR'') is June 1, 2000 through May 31, 2001. With regard to Ta Chen, we preliminarily determine that sales have been made below normal value (''NV''). With regard to Liang Feng and Tru-Flow, we are preliminarily rescinding this review based on record evidence supporting the conclusion that there

were no entries into the United States of subject merchandise during the POR. For a discussion of the preliminary rescission as to Liang Feng and Tru-Flow, see the ''Preliminary Rescission of Review in Part'' section of this notice.

If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of Ta Chen's merchandise during the period of review, in accordance with the Department's regulations (19 CFR 351.106 and 351.212(b)). The preliminary results are listed below in the section titled ''Preliminary Results of Review.''

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Amy Ryan or James C. Doyle, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0961 and (202) 482–0159, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

Background

On June 16, 1993, the Department published in the **Federal Register** the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. *See Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Taiwan,* 58 FR 33250 (June 16, 1993). On June 11, 2001, we published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan covering the period June 1, 2000 through May 31, 2001. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation,* 66 FR 31203 (June 11, 2001). On June 29, 2001, respondent, Ta Chen requested that the Department conduct an administrative for the period of June 1, 2000 to May 31, 2001. Additionally, on June 29, 2001, the petitioners requested that the Department conduct an administrative review of Ta Chen, Liang Feng and Tru-Flow for the period of June 1, 2000 through May 31, 2001. On July 23, 2001, the Department published a notice of initiation of this antidumping duty administrative review for the period of June 1, 2000 through May 31, 2001. *See Notice of Initiation of Antidumping or Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 66 FR 38252 (July 23, 2001).

On July 25, 2001, the Department issued its antidumping questionnaire to Ta Chen, Liang Feng and Tru-Flow. On July 30, 2001, Liang Feng reported that it had no sales, entries or shipments of subject merchandise to the United States during the POR. Additionally, on July 31, 2001, Tru-Flow reported that it had no sales, entries or shipment of subject merchandise to the United States during the POR. On August 6, 2001, the petitioners opposed Liang Feng's and Tru-Flow's statements from their July 30 and July 31 letters, respectively.

On August 15, 2001, Ta Chen reported that it made sales of subject merchandise to the United States during the period of review (''POR'') in its response to Section A of the Department's questionnaire. On September 7, 2001, Ta Chen submitted its response to Sections B, C, and D of the Department's questionnaire. On August 28, 2001, the Department issued to Ta Chen a supplemental questionnaire to Section A of the Department's questionnaire, for which Ta Chen submitted its response on September 25, 2001. On January 8, 2002, the Department issued to Ta Chen a supplemental questionnaire to Sections B, C, and D of the Department's questionnaire. On January 29, 2002, Ta Chen submitted its response to this supplemental questionnaire. On April 23, 2002, the Department issued to Ta Chen the second supplemental questionnaire to Sections A–D of the Department's questionnaire. On May 13, 2002, Ta Chen submitted its response to the second supplemental questionnaire for Sections A–D of the Department's questionnaire. On May 17, 2002, the Department asked Ta Chen to submit various pages that were missing from the exhibits in the May 13, 2002 submission. On May 17, 2002, Ta Chen submitted two sets of information, one of which contained the missing exhibit pages the Department requested. The larger submission Ta Chen submitted was additional information it claimed was inadvertently omitted from its response to the Department's second Sections A–D supplemental questionnaire. On June 12, 2002, the Department requested that Ta Chen resubmit its U.S. sales database to incorporate one of the minor corrections from verification. Ta Chen submitted the revised U.S. sales database on June 14, 2002. On June 13, 2002, the Department asked Ta Chen an additional supplemental question regarding clarification of a specific home market sales observation.

Additionally, the Department sent questionnaires to two of Ta Chen's subcontractors on January 28, 2002, to which they responded on February 18, 2002. On April 25, 2002, the Department issued a supplemental questionnaire to the same two subcontractors. They sent in their responses on May 23, 2002.

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for conducting an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 245 days. On January 22, 2002, the Department extended the time limits for these preliminary results by 120 days to June 29, 2002 in accordance with the Act. However, because June 29, 2002 falls on a weekend, the Department stated it would release its preliminary results on July 1, 2002. *See Notice of Postponement of Preliminary Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan,* 67 FR 2856 (January 22, 2002).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Preliminary Rescission of Review in Part

The Department preliminarily finds that Liang Feng and Tru-Flow had no entries during the POR. Thus, the Department is preliminarily rescinding this review.

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. The Department explained this practice in the preamble to the Department's regulations. *See Antidumping Duties; Countervailing Duties* 62 FR 27296, 27317 (May 19, 1997) (''Preamble'').

In July of 2001, both Liang Feng and Tru Flow provided letters on the record stating that they had no sales of subject merchandise during the POR. *See* Liang Feng's letter dated July 30, 2001 and Tru Flow's letter dated July 31, 2001. To confirm their statements, on August 14,

2001, the Department conducted a Customs inquiry and determined to its satisfaction on the record that there were no entries of subject merchandise during the POR. *See* the June 28, 2002 Memorandum to the File. *See Notice of Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review,* 67 FR 5789, 5790 (February 7, 2002) and *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review,* 66 FR 18610, (April 10, 2001).

Therefore, pursuant to 19 CFR 351.213(d)(3), the Department is preliminarily rescinding this review as to Liang Feng and Tru Flow because we find that there were no entries of subject merchandise during the POR.

Scope of the Review

The products subject to this administrative review are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter. Certain welded stainless steel butt-weld pipe fittings (''pipe fittings'') are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes the most basic: ''elbows'', ''tees'', ''reducers'', ''stub ends'', and ''caps.'' The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive. Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

Period of Review

The POR for this administrative review is June 1, 2000 through May 31, 2001.

Verification

As provided in section 782(i) of the Act, from May 20–23, 2002, the Department verified sales, cost and production information of Ta Chen's U.S. affiliate, Ta Chen International (CA) Corp., using standard verification procedures, including an examination of relevant sales, financial and production records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports and are on file in the Central Records Unit (''CRU'') located in room 1870 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC. For changes to Ta Chen's expenses based on verification findings, *see* ''Facts Available'' section below.

Product Comparison

In accordance with section 771(16) of the Act, we considered all pipe fittings produced by Ta Chen, covered by the description in the ''Scope of Review'' section of this notice and sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to pipe fittings sold in the United States. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Ta Chen as follows (listed in order of preference): specification, seam, grade, size and schedule.

As in the 1999–2000 administrative review (''99/00 review''), the record shows that Ta Chen both purchased from, and entered into tolling arrangements with, two unaffiliated Taiwanese manufacturers of subject merchandise. *See* Ta Chen's August 15, 2001 Section A questionnaire response at 2. Also, as in the 99/00 review there is no evidence on the record that either manufacturer had knowledge that the subject merchandise would be sold into the United States market. *See* both subcontractors' questionnaire responses dated February 19, 2002 and their supplemental responses dated May 23, 2002. According to Ta Chen's August 15, 2001 Section A response, for subcontracted fittings, it labels itself as the manufacturer. Regarding these sales for which Ta Chen can identify with certainty which of the two unaffiliated Taiwanese companies was the producer, we have preliminarily determined that it is not appropriate to extract such sales from Ta Chen's U.S. sales database because we have no evidence on the record that the unaffiliated producers had knowledge that their subject fittings were destined for sale by Ta Chen in the U.S. market. However, section 771(16) of the Act defines ''foreign like product'' to be ''(t)he subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.'' Thus, consistent with the Department's past practice, we have restricted the matching of products which Ta Chen has identified with certainty that it purchased from a particular unaffiliated producer and resold in the U.S. market, to identical or similar products purchased by Ta Chen from the same unaffiliated producer and resold in the home market. Finally, where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the physical characteristics or to constructed value (''CV''), as appropriate.

Date of Sale

The Department's regulations state that the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. *See* 19 CFR 351.401(i). If Commerce can establish ''a different date (that) better reflects the date on which the exporter or producer establishes the material terms of sale,'' Commerce may choose a different date. *Id.*

In the present review, Ta Chen claimed that invoice date should be used as the date of sale in both the home market and U.S. market. *See* Ta Chen's Sections B and C responses. (September 10, 2001). Moreover, Ta Chen did not indicate any industry practice which would warrant the use of a date other than invoice date in determining date of sale.

Accordingly, as we have no information demonstrating that another date is more appropriate, we preliminarily based date of sale on invoice date recorded in the ordinary course of business by the involved sellers and resellers of the subject merchandise in accordance with 19 CFR 351.401(i).

Fair Value Comparisons

To determine whether sales of subject merchandise by Ta Chen to the United States were made at prices below normal value (''NV''), we compared, where appropriate, the constructed export price (''CEP'') to the NV, as described below. Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to

the monthly weight-averaged NV of the foreign like product where there were sales at prices above the cost of production (''COP''), as discussed in the ''Cost of Production Analysis'' section below. For a further discussion of the EP sales reclassification to CEP, see below.

Export Price/Constructed Export Price

Section 772(a) of the Act defines export price as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. * * *'' Section 772(b) of the Act defines constructed export price as ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. * * *''

Consistent with recent past reviews, all of the sales at issue are being considered CEP sales because the sale to the first unaffiliated customer was made between Ta Chen International (CA) Corp. (''TCI''), located in the United States, and the unaffiliated customer in the United States. *See Analysis Memorandum for Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of the 2000–2001 Administrative Review of Certain Stainless Steel Butt-weld Pipe Fittings from Taiwan* (July 1, 2002) (''Analysis Memo''). *See also* Sections B–D supplemental questionnaire response (January 29, 2002). TCI takes title to subject merchandise, invoices the U.S. customer, and receives payment from the U.S. customer. In addition, TCI incurs seller's risk, relays orders and price requests from the U.S. customer to Ta Chen, and pays for U.S. Customs brokerage charges, U.S. antidumping duties, ocean freight and U.S. inland freight. *See* Section A Supplemental Questionnaire Response (September 5, 2001).

Having determined such sales are CEP, we calculated the price of Ta Chen's sales based on CEP in accordance with section 772(b) of the Act. We calculated CEP based on FOB or delivered prices to unaffiliated purchasers in the United States and, where appropriate, we deducted discounts. In addition, in accordance with section 772(d)(1), the Department deducted commissions, direct selling expenses and indirect selling expenses, including inventory carrying costs, which related to commercial activity in the United States. With respect to inventory carrying costs, we note that certain of Ta Chen's sales do not enter TCI's inventory prior to shipment to U.S. customers, but are shipped directly to the end user. Therefore, we removed the cost of goods sold for those sales used in the calculation of Ta Chen's reported inventory turnover ratio. We also made deductions for movement expenses, which include foreign inland freight, foreign brokerage and handling, ocean freight, containerization expense, harbor construction tax, marine insurance, U.S. inland freight, U.S. brokerage and handling, and U.S. Customs duties. We also deducted U.S. freight cost that TCI incurred when moving merchandise among its warehouses, in addition to freight expenses that TCI incurred on behalf of a customer returning merchandise. Finally, where appropriate, in accordance with sections 772(d)(3) and 772(f) of the Act, we deducted CEP profit.

Normal Value

After testing home market viability, as discussed below, we calculated NV as noted in the ''Price-to-CV Comparisons'' and ''Price-to-Price Comparisons'' sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared Ta Chen's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. In addition, Ta Chen stated that the home market is viable since sales to the home market are more than five percent by quantity of sales in the United States. *See* Section A questionnaire response (August 15, 2001) at 3. Because Ta Chen's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we preliminarily determine that the home market was viable. We, therefore, based NV on home market sales.

2. Cost of Production Analysis

Because we disregarded sales below the cost of production in the most-recently completed segment of this proceeding,[1] we have reasonable grounds to believe or suspect that sales by Ta Chen in its home market were made at prices below the COP, pursuant to sections 773(b)(1) and 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we conducted a COP analysis of home market sales by Ta Chen.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weight-averaged COP based on the sum of Ta Chen's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (''G&A''), interest expenses, and packing costs. We relied on the COP data submitted by Ta Chen in its original and supplemental cost questionnaire responses. For these preliminary results, we did not make any adjustments to Ta Chen's submitted costs.

B. Test of Home Market Prices

We compared the weight-averaged COP for Ta Chen to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) Within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Ta Chen's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of Ta Chen's sales of a given product during the POR were at prices less than the COP, we determined that such sales have been made in ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we use POR average

[1] *See Notice of Final Results in the Antidumping Duty Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan,* 66 FR 66899, (December 21, 2001).

costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

D. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Ta Chen's cost of materials, fabrication, G&A (including interest expenses), U.S. packing costs, direct and indirect selling expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Ta Chen in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weight-averaged home market direct and indirect selling expenses.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the cost of production (''COP''), we based NV on prices to home market customers. We calculated NV based on prices to unaffiliated home market customers. Where appropriate, we deducted early payment discounts, credit expenses, and inland freight. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in CEP comparisons. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs. In accordance with section 773(b)(1) of the Act, where there were no usable contemporaneous matches to a U.S. sale observation, we based NV on CV.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market, or when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732 (November 19, 1997).

In reviewing a respondent's request for a LOT adjustment, we examine all types of selling functions and activities reported in respondent's questionnaire response on LOT. In analyzing differences in selling functions, we determine whether LOT's identified by the respondent are meaningful. *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27371 (May 19, 1997).

Ta Chen reported one LOT in the home market based on two channels of distribution: trading companies and end-users. We examined the reported selling functions and found that Ta Chen's selling functions to its home market customers, regardless of channel of distribution, include inventory maintenance, technical services, packing, after-sales services, freight and delivery arrangements, general selling functions, some research and development, and customer service. *See* Ta Chen's September 25, 2002 Section A supplemental questionnaire response at 7–9. We, therefore, preliminarily conclude that the selling functions for the reported channels of distribution are sufficiently similar to consider them as one LOT in the comparison market.

Because Ta Chen reported that all of its U.S. CEP sales are made through TCI, Ta Chen is claiming that there is only one LOT in the U.S. market for its constructed export price sales and we preliminarily agree with Ta Chen that its U.S. sales constitute a single LOT. We examined the reported selling functions and found that Ta Chen's selling functions for sales to TCI include order processing, payment of marine insurance and packing for shipment to the United States. TCI handles the remaining selling functions for U.S. sales, such as: Communicating with U.S. customers; handling customer orders; dealing with U.S. Customs duties, brokerage, inland freight and U.S. warehousing; taking seller's risk; and, incurring inventory carrying costs on the water and ocean freight. Accordingly, for these U.S. sales, we preliminarily find that Ta Chen performed fewer selling functions than it did in the home market. Ta Chen requested a CEP offset due to differences in level of trade between its home market and U.S. sales (*see* Ta Chen's August 15, 2001 Section A questionnaire response). When, as here, the NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, the Department's practice is to adjust NV to account for this difference. However, we were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act. Therefore, we applied a CEP offset to the NV–CEP comparisons, in accordance with section 773(a)(7)(B) of the Act.

Facts Available

We preliminarily determine that the use of facts available is appropriate for two elements of Ta Chen's dumping margin calculation. Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

In this case, at the verification of TCI from May 20–23, 2002, TCI presented as a minor correction a very small number of previously unreported U.S. sales from one of its U.S. warehouses. The information TCI supplied to the Department included the POR warehouse expenses, the total sales value, the total weight in kilograms and the total number of pieces. *See U.S. Verification Report of Ta Chen International (CA) Corp.: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan* (July 1, 2002) at page 2 and Exhibit 1.

Consistent with section 776(a)(2)(B) of the Act, we have preliminarily

determined that the use of partial facts available is warranted for these unreported U.S. sales. This U.S. sales information should have been reported in respondent's questionnaire responses. By failing to report the information until verification, respondent prevented the Department from gathering and verifying further information that was necessary to calculate an actual margin for those sales. Therefore, the Department finds it necessary to apply partial facts available for these sales. As facts available, the Department applied the average positive margin to the total value of the sales that TCI failed to report. *See* Analysis Memo.

Also, at verification, the Department found that in TCI's POR third country export sales of subject merchandise, it had included some sales to a location that is considered a U.S. territory. Because this location is a U.S. territory, the Department considers sales to that territory as U.S. sales. Consistent with section 776(a)(2)(B) of the Act, we preliminarily determine that use of partial facts available is warranted, because respondent failed to report the U.S. sales information in the form or manner requested. As with the above mentioned unreported U.S. sales, the Department has applied the average positive margin to the total sales value of the unreported sales to the U.S. territory. *See* the proprietary version of the Analysis Memo for the identification of the U.S. territory.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the exchange rates in effect on the dates of the U.S. sales as published by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in effect on the date of sale of subject merchandise in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined, as a general matter, that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See,* e.g., *Certain Stainless Steel Wire Rods from France: Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 8915, 8918 (March 6, 1996) and *Policy Bulletin 96–1: Currency Conversions,* 61 FR 9434, March 8, 1996. As indicated in these precedents, the benchmark is defined as the rolling average of rates for the past 40 business days. When we determined a fluctuation existed, we substituted the benchmark for the daily rate.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weight-averaged dumping margin exists for the period June 1, 2000 through May 31, 2001: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan

Producer/manufacturer/exporter	Weight-averaged margin (in percent)
Ta Chen	2.63

The Department will disclose to any party to the proceeding, within five days of publication of this notice, the calculations performed (19 CFR 351.224(b)). Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with an additional copy of the public version of any such comments on diskette. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the results and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. This rate will be used for the assessment of antidumping duties on all entries of the subject merchandise by that importer during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash deposit rate for Ta Chen, the only reviewed company, will be that established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will continue to be the ''all other'' rate established in the LTFV investigation, which was 51.01 percent.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 1, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–17201 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Stainless Steel Sheet and Strip in Coils From Taiwan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils From Taiwan.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (''SSSS'') from Taiwan in response to requests from respondents Yieh United Steel Corporation (''YUSCO''), Tung Mung Development Co., Ltd. (''Tung Mung'') and Chia Far Industrial Factory Co., Ltd. (''Chia Far''), and petitioners[1] who requested a review of YUSCO, Tung Mung, and Ta Chen Stainless Pipe Company Ltd. (''Ta Chen''), Chia Far and any of their affiliates in accordance with 19 CFR 351.213. This review covers imports of subject merchandise from YUSCO, Tung Mung, Ta Chen, and Chia Far. The period of review (''POR'') is July 1, 2000 through June 30, 2001.

Our preliminary results of review indicate that Chia Far has sold subject merchandise at less than normal value (''NV'') during the POR and that YUSCO did not make any sales below normal value during the POR. Additionally, Tung Mung did not participate in this review. Therefore, we are applying an adverse facts available (''AFA'') rate to all sales and entries of Tung Mung's subject merchandise during the POR. Lastly, we have preliminarily determined to rescind the review with respect to Ta Chen, because the evidence on the record indicates that it had no shipments of subject merchandise to the United States during the POR. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of Chia Far's and Tung Mung's merchandise during the POR, in accordance with the Department's regulations found at 19 CFR 351.106 and 351.212(b).

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding should also submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita (Ta Chen); Cheryl Werner (Chia Far); Mesbah Motamed (YUSCO), Marlene Hewitt (Tung Mung); or Bob Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4243, (202) 482–2667, (202) 482–1382, (202) 482–1385 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended the (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

Background

On July 2, 2001, the Department published in the Federal Register a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on stainless steel sheet and strip in coils from Taiwan. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 66 FR 34910 (July 2, 2001), as corrected, 66 FR 38455 (July 24, 2001). On July 30, 2001, YUSCO, Tung Mung and Chia Far, producers and exporters of subject merchandise during the POR, in accordance with 19 CFR 351.213(b), requested an administrative review of the antidumping order covering the period July 1, 2000 through June 30, 2001. On July 31, 2001, petitioners requested a review of YUSCO, Tung Mung, Ta Chen, and Chia Far and its affiliates in accordance with 19 CFR 351.213(b). On August 20, 2001, the Department published in the Federal Register a notice of initiation of administrative review of this order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 43570 (August 20, 2001).

On August 30, 2001, the Department issued questionnaires to YUSCO, Tung Mung, Chia Far and Ta Chen. On September 20, 2001, Ta Chen informed the Department that it had no shipments of subject merchandise to the United States during the POR, and requested an exemption from answering the questionnaire. On October 17, 2001, we sent a letter to Tung Mung explaining that we had not received its questionnaire response, and that, in the absence of a complete questionnaire response, we would be forced to apply facts available, as directed by section 776(a) of the Act. On October 19, 2001, Tung Mung submitted a letter responding that it would no longer be participating in this administrative review.

On October 4, 2001, YUSCO submitted its Section A questionnaire response. On November 13, 2001, YUSCO submitted its Sections B through D questionnaire response. On March 22, 2002, we issued a supplemental Sections A through C questionnaire to YUSCO and on April 4, 2002, we issued a supplemental Section D questionnaire to YUSCO. On April 16, 2002, YUSCO submitted its supplemental Sections A through C questionnaire response and on April 19, 2002, YUSCO submitted its supplemental Section D questionnaire response. On April 26, 2002, we issued a second supplemental Sections A through D questionnaire to YUSCO. On May 6, 2002, YUSCO submitted its second supplemental Sections A through D questionnaire response.

On October 4, 2001, Chia Far submitted its Section A questionnaire response. On October 29, 2001, Chia Far submitted its Sections B and C questionnaire responses. We issued a supplemental Section A through C questionnaire to Chia Far on January 3, 2002. On January 4, 2002, Chia Far submitted its Section D questionnaire response. On January 31, 2002, Chia Far submitted its supplemental Sections A through C questionnaire response. On March 13, 2002, we issued a supplemental Section D questionnaire to Chia Far. On April 5, 2002, we issued a second supplemental Sections A through C questionnaire to Chia Far. On April 5, 2002, Chia Far submitted its supplemental Section D questionnaire response. On April 22, 2002, we issued a second supplemental Section D questionnaire to Chia Far. On April 22, 2002, Chia Far submitted its second supplemental Sections A through C questionnaire response, and on May 3, 2002, submitted its second supplemental Section D questionnaire response.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. On March 6, 2002, the Department extended the time limit for the preliminary results in this review to July 1, 2002. *See Stainless Steel Sheet and Strip in Coils from Taiwan: Extension of Time Limits for Preliminary Results of*

[1] Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC.

Antidumping Duty Administrative Review, 67 FR 10134 (March 6, 2002).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Verification

As provided in section 782(i) of the Act, we verified the sales and cost information provided by YUSCO from May 13, 2002 to May 21, 2002, including an examination of relevant sales, cost, and financial records, and selection of original documentation containing relevant information. We verified sales and cost information provided by Chia Far from May 22, 2002 to May 31, 2002. In addition, we verified the constructed export price (''CEP'') sales information provided by Chia Far on behalf of Lucky Medsup, Inc. (''Lucky Medsup''), its affiliated reseller in the United States, from June 13, 2002 to June 14, 2002. Our verification results are outlined in the public version of the verification reports and are on file in the Central Records Unit (''CRU'') located in room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Scope of the Review

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81 , 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise covered by this order is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department also determined that certain specialty stainless steel products were excluded from the scope of the investigation and the subsequent order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to AISI grade 420, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[6]

Partial Rescission of Review

As noted above, Ta Chen informed the Department that it had no shipments of subject merchandise to the United States during the POR. The Department subsequently contacted the U.S. Customs Service, had Customs do an inquiry into Ta Chen's exports to the United States during the POR, and reviewed Customs' data. There is no evidence on the record which indicates that Ta Chen made exports of subject merchandise during the POR. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are preliminarily rescinding our review with respect to Ta Chen. *See e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey; Final Results and Partial Rescission of Antidumping Administrative Review*, 63 FR 35190, 35191 (June 29, 1998); *Certain Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53288 (Oct. 14, 1997).

Facts Available (''FA'')

Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department shall use facts available in reaching the applicable determination. In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* the Statement of Administrative Action to the URAA, H. Doc. 103–316 (1994) at 870 (''*SAA*'') (further discussing the application of adverse facts available).

For the preliminary results of review, in accordance with section 776(a)(2) of the Act, we have determined that the use of facts available is appropriate for Tung Mung. We confirmed that Tung Mung received the Department's questionnaire. Pursuant to section 782(d) of the Act, after the Department did not receive a response to its first communication to Tung Mung, it followed up with a letter informing Tung Mung of the potential results if it chose not to cooperate further in the administration of the review. *See Letter to Tung Mung from DOC re: Non-response to Questionnaire*, dated October 17, 2001. In a letter dated October 19, 2001, Tung Mung responded that it was declining to respond to the questionnaire or participate in the administrative review. Because Tung Mung failed to provide any information on the record for this administrative review, we have no alternative but to apply total facts available to Tung Mung.

As noted above, in selecting facts otherwise available, pursuant to section 776(b) of the Act, the Department may use an adverse inference if the Department finds that an interested party, such as Tung Mung, failed to cooperate by not acting to the best of its ability to comply with requests for information. Tung Mung has not acted to the best of its ability in this administrative review, failing to cooperate in any way with the Department. Consistent with Department's practice in cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b) of the Act, as adverse facts available, we have applied a margin based on the highest appropriate margin from this or any prior segment of the proceeding. *See Elemental Sulphur From Canada: Final Results of Antidumping Duty Administrative Review*, 65 FR 77567 (December 12, 2000).

The Department notes that while the highest margin calculated during this or any prior segment of the proceeding is 34.95 percent, this margin represents a combined rate applied in a channel transaction in the investigation of this proceeding based on middleman dumping by Ta Chen. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip from Taiwan*, 64 FR 30592 (June 8, 1999) (''SSSS Investigation'').

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Where circumstances indicate that a particular margin is not appropriate as adverse facts available, the Department will disregard the margin and determine another, more appropriate one as facts available. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin for use as adverse facts available because the margin was based on another company's uncharacteristic business expense, resulting in an unusually high margin). Because the middleman dumping calculated margin would be inappropriate, given that the record does not indicate that any of Tung Mung's exports to the United States during the POR involved a middleman, the Department has applied the highest margin from any segment of the proceeding for a producer's direct exports to the U.S. without middleman dumping, which is 21.10 percent.

The rate of 21.10 percent, was applied in the first administrative review for another respondent and constitutes secondary information. Section 776(c) of the Act requires the Department, to the extent practicable, to corroborate secondary information from independent sources that are reasonably at its disposal. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See SAA* at 870. As noted in *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (Nov. 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, there are no independent sources from which the Department can derive calculated dumping margins. Therefore, unlike other types of information such as input costs or selling expenses, the only source of dumping margins is the calculated dumping margins from previous administrative determinations.

The Department corroborated the information used to establish the 21.10 percent rate in the first administrative review, finding the information to be both reliable and relevant. *See Stainless Steel Sheet and Strip in Coils From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682, (February 13, 2002) and accompanying *Issues and Decision Memorandum* at *Comment 28*. Nothing on the record of this instant administrative review calls into question the reliability of this rate. Furthermore, with respect to the relevance aspect of corroboration, the Department has determined that there is no evidence on the record which would render the application of this margin inappropriate. Therefore, we consider the margin relevant to this proceeding as well. Thus, we find that the rate of 21.0 percent from the first administrative review is sufficiently corroborated for purposes of this current administrative review.

Normal Value Comparisons

To determine whether respondent's sales of subject merchandise from Taiwan to the United States were made at less than normal value, we compared the export price (''EP'') and CEP, as appropriate, to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP and CEP transactions.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the description in the ''Scope of the Review'' section of this notice, *supra*, and sold by YUSCO and Chia Far in the home market during the POR to be foreign like product for the purpose of determining appropriate product comparisons to SSSS products sold in the United States. We have relied on nine product characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product: grade, hot or cold-rolled, gauge, surface finish, metallic coating, non-metallic coating, width, temper, and edge. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the August 30, 2001 antidumping duty questionnaire and instructions, or to constructed value (''CV''), as appropriate. We made corrections to reported U.S. and home market sales data based on the Department's findings at verification, as appropriate.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

YUSCO

For purposes of this administrative review, YUSCO classified its sales as EP sales, stating that ''(it) sold subject merchandise directly to an unaffiliated importer in the United States during the POR.'' Therefore, we are using EP as defined in section 772(a) of the Act because the merchandise was sold, prior to importation, outside the United States by YUSCO to an unaffiliated purchaser in the United States. We based EP on packed prices to unaffiliated purchasers in the United States. We made deductions for inland freight (from YUSCO's plant to the port of export), international freight, marine insurance, container handling fees, certification handling fees, brokerage and handling, imputed credit, and packing in accordance with section 772(c) of the Act. We made no changes or corrections to the U.S. sales information reported by YUSCO as a result of our verification findings in the calculation of YUSCO's dumping margin.

Chia Far

For purposes of this review, Chia Far has classified its sales as either EP or CEP sales. We are using EP as defined in section 772(a) of the Act for sales of subject merchandise that were sold, prior to importation, outside the United States by Chia Far to an unaffiliated purchaser in the United States. We based EP on the packed prices to unaffiliated purchasers in the United States. We made deductions for movement expenses including: foreign inland freight from the plant to port of exportation, brokerage and handling, international ocean freight, marine insurance, container handling charges, harbor construction fees. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

We are using CEP as defined in section 772(a) of the Act for sales of subject merchandise that were sold,

after importation, by Lucky Medsup, Chia Far's affiliated reseller, to an unaffiliated purchaser in the United States. We based CEP on the packed prices to the first unaffiliated purchaser in the United States. We made deductions for movement expenses including: foreign inland freight from the plant to the port of exportation, international freight, marine insurance, brokerage and handling, container handling charges, harbor construction fees, other U.S. transportation expenses and U.S. duty. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. In accordance with section 772(d)(1) of the Act, we deducted selling expenses associated with economic activities occurring in the United States, including direct selling expenses and indirect selling expenses.

We made adjustments to Chia Far's reported inventory carrying costs to exclude expenses attributed to the time period between the date of shipment and the date of arrival in the United States. *See, Analysis for the Preliminary Results of Review for Stainless Steel Strip in Coils From Taiwan-Chia Far Industrial Factory Co., Ltd.* (July 1, 2002) (''*Chia Far Preliminary Analysis Memo*'') and *Verification of Sales and Cost for Chia Far Industrial Factory Co., Ltd. in the 2nd Antidumping Administrative Review for Stainless Steel Sheet and Strip in Coils from Taiwan* (July 1, 2002) (''*Chia Far Verification Report*''). In addition, we revised the U.S. sales listing, based on our findings at verification, to account for CEP sales made by Lucky Medsup during the POR of subject merchandise which was rejected by the customer and re-sold after the POR. *See Chia Far Preliminary Analysis Memo* (July 1, 2002) and *Verification of CEP Sales Made by Lucky Medsup, Inc in the 2nd Antidumping Administrative Review for Stainless Steel Sheet and Strip in Coils from Taiwan* (''*Chia Far CEP Verification Report*'') (July 1, 2002).

We deducted the profit allocated to expenses deducted under sections 772(d)(1) and (d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

Normal Value

1. Home Market Viability

For YUSCO and Chia Far, we compared the aggregate volume of home market sales of the foreign like product and U.S. sales of the subject merchandise to determine whether the volume of the foreign like product sold in Taiwan was sufficient, pursuant to section 773(a)(1)(C) of the Act, to form a basis for NV. Because the volume of home market sales of the foreign like product was greater than five percent of the U.S. sales of subject merchandise for both companies, in accordance with section 773(a)(1)(B)(i) of the Act, we have based the determination of NV upon the home market sales of the foreign like product. Thus, we used as NV the prices at which the foreign like product was first sold for consumption in Taiwan, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade (''LOT'') as the CEP or NV sales, as appropriate.

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-Constructed Value (''CV'') Comparisons'' sections of this notice.

2. Arm's-Length Test

YUSCO reported that it made sales in the home market to affiliated and unaffiliated end users and distributors/retailers. Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all billing adjustments, movement charges, direct selling expenses, discounts and packing, but including the alloy surcharge. Where prices to the affiliated party were on average 99.5 percent or more of the price to the affiliated party, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). Where no affiliated customer ratio could be calculated because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's length and, therefore, excluded them from our analysis. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made comparisons to the next most similar model. Certain of YUSCO's affiliated home market customers did not pass the arm's length test. Therefore, we have considered the downstream sales from these customers to the first unaffiliated customer.

3. Cost of Production (''COP'') Analysis

YUSCO

Because the Department determined that YUSCO made sales in the home market at prices below the cost of producing the subject merchandise in the previous administrative review of YUSCO and therefore excluded such sales from normal value, the Department determined that there are reasonable grounds to believe or suspect that YUSCO made sales in the home market at prices below the cost of producing the merchandise in this administrative review. See section 773(b)(2)(A)(ii) of the Act. As a result, the Department initiated a cost of production inquiry to determine whether YUSCO made home market sales during the POR at prices below their respective COP within the meaning of section 773(b) of the Act.

Chia Far

Because we found that Chia Far did not act to the best of its ability in providing information to the Department in the previous administrative review of Chia Far, we applied total adverse facts available, which included a finding on that basis that Chia Far's sales were made below cost. The application of total adverse facts available applies to all claims on the record, including claims of below-cost sales. Thus, we discounted all of Chia Far's home market sales in the previous review. Section 773(b)(2)(A)(ii) of the Act states that if the Department has disregarded sales in a previous review because of a finding that those sales were made below cost, the Department will have reasonable grounds to believe or suspect that sales were made below cost. As a result, the Department initiated a cost of production inquiry to determine whether Chia Far made home market sales during the POR at prices below their respective COP within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of YUSCO's and Chia Far's cost of materials and fabrication for the foreign like product, plus amounts for home

market selling, general and administrative expenses (''SG&A''), including interest expenses, and packing costs. We relied on the COP data submitted by YUSCO in its original and supplemental cost questionnaire responses. For the preliminary results of review, we revised the COP information submitted by Chia Far as follows: 1) We revised G&A expense to exclude unrealized foreign exchange-rate and translation gains and losses; and 2) we revised interest expenses to exclude dividend income as an offset to interest expense. *See Chia Far Preliminary Analysis Memo* (July 1, 2002) and *Chia Far Verification Report* (July 1, 2002).

We made no changes to the COP information provided to conduct the cost test.

B. Test of Home Market Prices

On a product-specific basis, we compared the weighted-average COP for YUSCO and Chia Far, adjusted where appropriate, to their home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in accordance with section 773(b)(1)(A) and (B) of the Act. We compared the COP to home market prices, less any applicable movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product within an extended period of time are at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the extended period were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' pursuant to section 773(b)(2)(C)(i) within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we used POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. As a result, we disregarded such below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product. Based on this test, we disregarded below-cost sales from our analysis for YUSCO and Chia Far. For those sales of subject merchandise for which there were no comparable home market sales in the ordinary course of trade, we compared EP or CEP to CV, in accordance with section 773(a)(4) of the Act.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated YUSCO's and Chia Far's constructed value (''CV'') based on the sum of their cost of materials, fabrication, SG&A, including interest expenses, and profit. We calculated the COPs included in the calculation of CV as noted above in the ''Calculation of COP'' section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by YUSCO and Chia Far in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses. For CV, we made the same adjustments described in the COP section above.

Price-to-Price Comparisons

YUSCO

For those product comparisons for which there were sales at prices above the COP, we based NV on the home market prices to unaffiliated purchasers and those affiliated customer sales which passed the arm's length test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

We calculated NV based on the home market prices to unaffiliated home market customers. Where appropriate, we deducted rebates, warranty expenses, and movement expenses (*e.g.*, inland freight from plant to customer) in accordance with section 773(a)(6)(B) of the Act.

We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6)(A) and (B), we deducted home market packing costs and added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing (''COM'') of the U.S. product, we based NV on CV.

We adjusted YUSCO's reported inventory carrying costs and credit expenses to account for an error in the short-term interest rate discovered at verification. *See*, *Verification of Sales and Cost for Yieh United Steel Corporation in the 2nd Antidumping Administrative Review for Stainless Steel Sheet and Strip in Coils from Taiwan* (''*YUSCO Verification Report*''), dated July 1, 2002 and *Analysis for the Preliminary Results of Review for Stainless Steel Strip in Coils From Taiwan- Yieh United Steel Corporation* (''*YUSCO Preliminary Analysis Memo*''), dated July 1, 2002. Additionally, we discovered at verification that YUSCO could not support the reported date of payment for downstream sales of its affiliate, Yieh Mau Corporation (''Yieh Mau''). Therefore, pursuant to section 776(a), as partial facts available, we have assigned to Yieh Mau's downstream sales a weighted-average payment date derived from YUSCO's sales to unaffiliated customers, and adjusted Yieh Mau's reported credit expenses accordingly. *See YUSCO Verification Report* and *YUSCO Analysis Memo*. We recalculated credit expenses for those YUSCO sales with missing payment and shipment dates. For sales with missing payment dates, the Department set the date of payment as July 1, 2002, the date of the preliminary results. *See* YUSCO Analysis Memo. Additionally, we recalculated credit expenses for those YUSCO sales with missing shipment dates. For missing shipment dates, the Department set the shipment date as invoice date because invoice most closely approximates shipment date. *See* YUSCO Analysis Memo.

Chia Far

For those product comparisons for which there were sales at prices above the COP, we based NV on the prices to unaffiliated purchasers in the home market. Where appropriate, we deducted movement expenses and direct selling expenses, and added U.S. direct selling expenses (credit) in accordance with section 773(a)(6)(B) of the Act.

We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6)(A) and (B), we deducted home market packing costs and added U.S. packing costs.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we obtained information from YUSCO and Chia Far about the marketing stages involved in its reported U.S. and home market sales, including a description of the selling activities performed by YUSCO and Chia Far for each channel of distribution. In identifying levels of trade for CEP, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). Generally, if the reported levels of trade are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different for different categories of sales, the functions and activities should be dissimilar.

In the present review, neither YUSCO nor Chia Far requested a LOT adjustment. To determine whether an adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and home markets, including the selling functions, classes of customer, and selling expenses.

YUSCO

In the home market (''HM''), YUSCO reported one level of trade. *See November 13, 2001 Questionnaire Response from YUSCO*, at B–25. YUSCO sold through one channel of distribution in the HM. For these HM customers, YUSCO provided the following selling functions: inland freight, warranty services, and technical advice. Because there is only one sales channel involving similar functions for all sales, we preliminarily determine that there is one LOT in the home market.

For the U.S. market, YUSCO reported one level of trade. *See November 13, 2001 Questionnaire Response from YUSCO*, at C–21–22. YUSCO sold through one channel of distribution in the U.S. market: to an unaffiliated local distributor. For U.S. sales, YUSCO provided the following selling functions: arranging freight and delivery; invoicing; and packing. YUSCO did not incur any expenses in the United States for its U.S. sales. Because there is only one sales channel in the United States, we preliminarily determine that there is one LOT in the United States.

Based on our analysis of the selling functions performed for sales in the HM and U.S. market, we preliminarily determine that the sales in the HM and U.S. market were made at the same LOT. Despite the existence of certain additional selling functions (*i.e.*, general consultation of technical advise and warranty services) performed by YUSCO for its HM sales, no significant difference exists in the selling functions performed in the HM and U.S. market. Therefore, a LOT adjustment is not warranted.

Chia Far

For its home market sales, Chia Far reported one channel of distribution, direct sales from inventory, and two customer categories, unaffiliated end users and unaffiliated distributors. For HM sales to both distributors and end-users, Chia Far performed many of the same major selling functions, including arranging freight and delivery, general technical and quality claim assistance (Chia Far stated that both were insignificant and therefore reported as indirect selling expenses), as well as price negotiation and customer communication, sample analysis, and after-sale processing at the customer's request. Therefore, based on Chia Far's selling functions performed for each type of customer, we preliminarily determine that there is one LOT in the home market.

For its U.S. sales, Chia Far reported two channels of distribution: EP sales made to order; and CEP sales made to order; and one customer category: unaffiliated distributors for both EP sales and CEP sales. Chia Far sold directly to unaffiliated distributors and, for its CEP sales, sold through Lucky Medsup, an affiliated U.S. company, which then sold to unaffiliated distributors in the United States. We examined the claimed selling functions performed by Chia Far for all U.S. sales. Chia Far provided the same level of the following services for both its sales made directly to the unaffiliated U.S. customer (EP sales) and sales made to Lucky Medsup (CEP sales) in the United States: arranging inland freight to the port and delivery, packing, processing inquiries and purchase orders, invoicing, and extending credit. For EP sales, Chia Far provided additional services including international freight, marine insurance, and banking charges.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between Chia Far and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market level of trade constituted a different level of trade than the CEP level of trade. Chia Far did not request a CEP offset. Nonetheless, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Taiwan markets, including the selling functions, classes of customer, and selling expenses to determine whether a CEP offset was necessary. For CEP sales, Chia Far provided many of the same selling functions and expenses for its sale to its affiliated U.S. reseller Lucky Medsup as it provided for its home market sales, including price negotiation and customer communication, sample analysis, and inland freight. Based on our analysis of the channels of

distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that there is not a significant difference in the selling functions performed in the home market and the U.S. market for CEP sales. Thus, we find that Chia Far's NV and CEP sales were made at the same LOT, and no LOT adjustment or CEP offset need be granted.

For EP sales in the U.S. market, Chia Far provided the same level of the following services for both EP and NV sales: price negotiation and customer communication; processing of customer order; and inland freight. For EP sales, Chia Far did not provide sample analysis during this review, however, this was only a minor difference. Furthermore, Chia Far provided additional services including international freight, marine insurance, and banking charges. Based on our analysis of the selling functions performed for sales in the HM and EP sales in the U.S. market described above, we preliminarily determine that there is not a significant difference in the selling functions performed in the home market and U.S. market and that these sales are made at the same LOT.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use the daily exchange rate in effect on the date of sale in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See, e.g., Certain Stainless Steel Wire Rods from France; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 8915, 8918 (March 6, 1998), and Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 8, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the period July 1, 2000 through June 30, 2001:

STAINLESS STEEL SHEET AND STRIP IN COILS FROM TAIWAN

Manufacturer/exporter/reseller	Margin (percent)
YUSCO	0.00
Chia Far	1.01
Tung Mung	21.10

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). Further, we would appreciate it if parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to 751(a)(3)(A) of the Act.

Assessment

Upon issuance of the final results of this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b), the Department has calculated an assessment rate applicable to all appropriate entries. We calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value, or entered quantity, as appropriate, of the examined sales for that importer. Upon completion of this review, where the assessment rate is above *de minimis*, we will instruct the U.S. Customs Service to assess duties on all entries of subject merchandise by that importer.

Cash Deposit

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for each of the reviewed companies will be the rate listed in the final results of review (except that if the rate for a particular product is *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 21.10 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply

with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 1, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–17198 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Stainless Steel Wire Rod from India: Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of the preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limits of the preliminary results of the antidumping duty administrative review of stainless steel wire rod (''SSWR'') from India. This review covers the period December 1, 2000 through November 30, 2001.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1102.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Background

On January 29, 2002, we published a notice of initiation of a review of SSWR from India covering the period December 1, 2000 through November 30, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, January, 22, 2002 (67 FR 4236). The Department's preliminary results are currently due on September 2, 2002.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 245–day period to issue its preliminary results by 120 days. Completion of the preliminary results of this review within the 245–day period is not practicable for the following reasons:

• The review involves four companies, a large number of transactions and complex adjustments.

• All companies include sales and cost investigations which require the Department to gather and analyze a significant amount of information pertaining to each company's sales practices, manufacturing costs and corporate relationships.

Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 60 days until November 1, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: July 1, 2002

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–17197 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–024.

Applicant: Massachusetts Institute of Technology, Gas Turbine Laboratory, 31–265, 77 Massachusetts Avenue, Cambridge, MA 02139–4307.

Instrument: Universal 5 Axis High Speed Machining Center, Model UCP 600.

Manufacturer: Mikron, Switzerland.

Intended Use: The instrument is intended to be used to study electromechanics at micron to millimeter scale; micro fluid and structural mechanics; micro rotor dynamics and air bearing fluid flow. Micro motor/generator torque and efficiency versus speed, micro turbomachinery pressure, rise flow capacity and efficiency, micro rotor precession and whirl onset, microbearing load capacity and stability will be investigated. Micro motor/generator, jet engines and rocket turbopumps will be spun to high speed (over 1 million rpm) during which their electrical performance, pressure rise versus flow characteristics, efficiency, and rotor motion will be measured by optical techniques and micro-sensors. The instrument will also be used for educational purposes in two graduate level courses: (1) Aircraft Gas Turbine Structures and (2) Aircraft Gas Turbine Design.

Application accepted by Commissioner of Customs: June 13, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–17029 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of

foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period January 1, 2002 through March 31, 2002. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or David Salkeld, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on cheeses that were imported during the period January 1, 2002 through March 31, 2002.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: June 28, 2002

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross Subsidy ($/lb)[1]	Net[2] Subsidy ($/lb)
Austria	European Union Restitution Payments	$ 0.11	$ 0.11
Belgium	EU Restitution Payments	$ 0.01	$ 0.01
Canada	Export Assistance on Certain Types of Cheese	$ 0.22	$ 0.22
Denmark	EU Restitution Payments	$ 0.06	$ 0.06
Finland	EU Restitution Payments	$ 0.13	$ 0.13
France	EU Restitution Payments	$ 0.10	$ 0.10
Germany	EU Restitution Payments	$ 0.06	$ 0.06
Greece	EU Restitution Payments	$0.00	$0.00
Ireland	EU Restitution Payments	$ 0.06	$ 0.06
Italy	EU Restitution Payments	$ 0.04	$ 0.04
Luxembourg	EU Restitution Payments	$0.07	$0.07
Netherlands	EU Restitution Payments	$ 0.04	$ 0.04
Norway	Indirect (Milk) Subsidy	$ 0.28	$ 0.28
	Consumer Subsidy	$ 0.13	$ 0.13
Total		$0.41	$0.41
Portugal	EU Restitution Payments	$ 0.04	$ 0.04
Spain	EU Restitution Payments	$ 0.02	$ 0.02
Switzerland	Deficiency Payments	$ 0.06	$ 0.06
U.K.	EU Restitution Payments	$ 0.04	$ 0.04

[1]Defined in 19 U.S.C. 1677(5).
[2]Defined in 19 U.S.C. 1677(6).

[FR Doc. 02–17028 Filed 7–8–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Coastal Zone Management Programs

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Michigan Coastal Management Program and the Alaska Coastal Management Program.

These Coastal Zone Management Program evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended and regulations at 15 CFR part 923, subpart L.

The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Zone Management Program requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. Public meetings will be held as part of the site visits.

Notice is hereby given of the dates of the site visit for these evaluations, and the date, local time, and location of the public meeting during the site visit.

The Michigan Coastal Management Program evaluation site visit will be

held September 9–13, 2002. One public meeting will be held during the week. The public meeting will be on Monday, September 9, 2002 from 3:30 to 5 p.m., at the Michigan Library and Historical Center, Lake Superior Room, 1st Floor, 717 West Allegan, Lansing, Michigan.

The Alaska Coastal Management Program evaluation site visit will be from September 9–16, 2002. One public meeting will beheld during the week. The public meeting will be a coast-wide public meeting held Thursday, September 12, 2002 from 7 to 9:30 p.m., via teleconference on the Alaska Legislative Teleconference Network. OCRM Evaluation staff will be at the Anchorage Legislative Information Office, at 716 W 4th Avenue, Suite 200, Anchorage. Teleconference connections will be provided to Legislative Information Offices in: Ketchikan, Sitka, Juneau, Cordova, Valdez, Homer, Kenai, Kodiak, Dillingham, Bethel, Nome, Kotzebue, and Barrow. Written or oral comments will be accepted, and a person does not need to attend the teleconference to submit written comments.

Copies of Michigan's and Alaska's most recent performance reports, as well as OCRM's notification and supplemental request letters to the States, are available upon request form OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Douglas Brown, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 120th floor, Silver Spring, Maryland 20910. When each evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Douglas Brown, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–3155, Extension 215.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration.)

Dated: June 28, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–16981 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–08–M

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Notification Requirements for Coal and Woodburning Appliances

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval, for a period of three years from the date of approval by the Office of Management and Budget, of information collection requirements in a coal and woodburning appliance rule.

The rule, codified at 16 CFR part 1406, requires manufacturers and importers of certain coal and woodburning appliances to provide safety information to consumers on labels and instructions and an explanation of how certain clearance distances in those labels and instructions were determined. The requirements to provide copies of labels and instructions to the Commission have been in effect since May 16, 1984. For this reason, the information burden imposed by this rule is limited to manufacturers and importers introducing new products or models, or making changes to labels, instructions, or information previously provided to the Commission. The purposes of the reporting requirements in part 1406 are to reduce risks of injuries from fires associated with the installation, operation, and maintenance of the appliances that are subject to the rule, and to assist the Commission in determining the extent to which manufacturers and importers comply with the requirements in part 1406. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than September 9, 2002.

ADDRESSES: Written comments should be captioned ''Notification Requirements for Coal and Wood Burning Stoves'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–0416, Ext. 2226.

SUPPLEMENTARY INFORMATION:

A. Estimated Burden

The Commission staff estimates that there may be up to about 5 firms required to annually submit labeling and other information. The staff further estimates that the average number of hours per respondent is three per year, for a total of about 15 hours of annual burden ($5 \times 3 = 15$).

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: July 2, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–17038 Filed 7–8–02; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–29]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a

section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–29 with attached transmittal and policy justification.

Dated: July 2, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

26 JUN 2002
In reply refer to:
I-02/007138

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-29 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Bahrain for defense articles and services estimated to cost $40 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-29

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Bahrain

(ii) Total Estimated Value:

Major Defense Equipment*	$29 million
Other	$11 million
TOTAL	$40 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: one AN/TPS-59(V)3 3-dimensional land based radar, one Air Defense Communication Platform, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support

(iv) Military Department: Navy (LAH)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover.

(viii) Date Report Delivered to Congress: 26 JUN 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Bahrain – AN/TPS-59(V)3 3-Dimensional Land Based Radar

The Government of Bahrain has requested a possible sale of one AN/TPS-59(V)3 3-dimensional land based radar, one Air Defense Communication Platform, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $40 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale of radar will provide more responsive and timely information for air defense operations. It would greatly simplify the projection of U.S. military forces during regional contingency operations by enhancing the deployment of 3-dimensional land based radar capabilities.

This proposed radar may be used for airborne early warning and defense in conjunction with the HAWK missile defense system that is already in place in Bahrain.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Corporation of Syracuse, New York. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require a U.S. contractor representative for one year representing varying technical skills and training in Bahrain.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 02–17048 Filed 7–8–02; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–31]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defence Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–31 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 2, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

25 JUN 2002
In reply refer to:
I-02/007332

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-31, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Canada for defense articles and services estimated to cost $19 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-31

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Canada

(ii) Total Estimated Value:

Major Defense Equipment*	$17 million
Other	$ 2 million
TOTAL	$19 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 12 SM-2 Block IIIA STANDARD missiles, 12 MK 13 MOD 0 canisters, containers, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support

(iv) Military Department: Navy (AOL)

(v) Prior Related Cases, if any:
FMS case AJY - $36 million – 30Sep88
FMS case AKT - $11 million – 02Oct87

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 25 JUN 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION (U)

Canada – SM-2 Block IIIA STANDARD Missiles

The Government of Canada has requested a possible sale of 12 SM-2 Block IIIA STANDARD missiles, 12 MK 13 MOD 0 canisters, containers, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $19 million.

This proposed sale would contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Canada and furthering weapon system standardization and interoperability with U.S. forces.

The Canadian Navy requires these defense articles to provide Anti-Aircraft Warfare (AAW) System capability. The evolution of the AAW threat in littoral nations mandates this defense capability. The Canadian Navy intends to use the defense articles on their Destroyer Class surface ships to safely operate the SM-2 Block STANDARD missiles for self-defense against air and cruise missile threat in Canada and the NATO theater community. Canada, which already has STANDARD missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems Company of Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Canada.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-31

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The SM-2 Block IIIA STANDARD is a surfaced-launched guided missile. It is operational and deployed on cruisers and destroyers for use against air and surface threats (aircraft, missiles, and ships). The Guidance System employs a continuous-wave radar link for homing to a target. Steering Control Unit and roll commands from the adaptive Auto-pilot Battery Unit system provides flight stability via four aft mounted control surfaces. Propulsion is provided by a solid propellant Dual Thrust Rocket Motor that is an integral part of the missile airframe. The Target Detecting Device is a complex fuse with dual radar systems to optimize warhead lethality against a spectrum of target sizes and speeds. The telemeter unit transmits missile performance data to ground station to be analyzed for accuracy of missile/target scenario.

2. The SM-2 Block IIIA is classified Confidential. Certain operating frequencies and performance characteristics are classified Secret. The parametric documents, missile handling procedures, general performance data, firing guidance, dynamics information, flight analysis procedures, missile log books, propulsion data sheets, and Shore Activity Maintenance Data Sheets of the STANDARD missile documentation are classified up to Confidential.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Canada can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–17049 Filed 7–8–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Membership of the Defense Logistics Agency (DLA) Senior Executive Services (SES) Performance Review Board (PRB)

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of membership—2002 DLA PRB.

SUMMARY: This notice announces the appointment of members to the Defense Logistics Agency Senior Executive Service (SES) Performance Review Board (PRB). The publication of PRB composition is required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations to the Director, Defense Logistics Agency, with respect to pay level adjustments and performance awards, and other actions related to management of the SES cadre.

EFFECTIVE DATE: July 1, 2002.

ADDRESSES: Defense Logistics Agency, 8725 John J. Kingman Road, STE 2533, Fort Belvoir, Virginia, 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Karon Webb, SES Program Manager, HQC Human Resources Office, Defense Logistics Agency, Department of Defense, (703) 767–6427.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DLA career executives appointed to serve as members of the SES PRB. Members will serve a 1-year term, which begins on July 1, 2002.

PRB Chair: Maj Gen Mary Saunders, USAF, Vice Director, DLA.

Members: Mr. Frank Lotts, Deputy Director, Logistics Operations, Ms. Phyllis Campbell, Deputy Commander,

Defense Distribution Center, Dr. Linda Furiga, Comptroller.

Radm Raymond A. Archer III,

SC, USN, Vice Director, Defense Logistics Agency.

[FR Doc. 02–17040 Filed 7–8–02; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 8, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 2, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief, Information, Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Protection and Advocacy of Individual Rights (PAIR) Program Assurances.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 9.

Abstract: Section 509 of the Rehabilitation Act of 1973 as amended (Act), and its implementing Federal Regulations at 34 CFR part 381, require the PAIR grantees to submit an application to the Rehabilitation Services Administration (RSA) Commissioner in order to receive assistance under Section 509 of the Act. The Act requires that the application contain Assurances to which the grantee must comply. Section 509(f) of the Act specifies the Assurances. There are 57 PAIR grantees. All 57 grantees are required to be part of the protection and advocacy system in each State established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 6041 *et seq.*)

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2026. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her internet address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–17066 Filed 7–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.038, 84.033, and 84.007]

Notice of the 2002–2003 Award Year Deadline Dates for Campus-Based Institutions

SUMMARY: The Secretary announces the 2002–2003 award year deadline dates for institutions to submit various funding and waiver requests and documents under the campus-based programs.

SUPPLEMENTARY INFORMATION: The deadlines provided in this notice are for requesting funding or waivers for the three programs that are collectively known as the campus-based programs. The three programs are the Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs.

The Federal Perkins Loan Program encourages institutions to make low-interest, long-term loans to needy undergraduate and graduate students to help pay for their cost of education.

The FWS Program encourages the part-time employment of needy undergraduate and graduate students to help pay for the cost of their education and to involve the students in community service activities.

The FSEOG Program encourages institutions to provide grants to exceptionally needy undergraduate students to help pay for their cost of education.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, subpart 3, respectively, of Title IV of the Higher Education Act of 1965, as amended.

Throughout the year, we will provide additional information regarding the individual deadline dates listed in this notice via the Information for Financial Aid Professionals (IFAP) web site: *http://www.ifap.ed.gov*

Deadline Dates: The following table provides the deadline dates for the campus-based programs for the 2002–2003 award year. Institutions must meet the established deadline dates to ensure consideration for funding or a waiver, as appropriate.

BILLING CODE 4000–01–U

2002-2003 Award Year Deadline Dates

What does an institution submit?	Where does this institution submit this?	What is the deadline for submission?
1. A request for a waiver of the FWS Community Service Expenditure Requirements for the 2002-2003 award year.	The FWS Community Service Waiver request must be signed and submitted by: FAX to: Pamela Wills at (202) 275-3476 or Hand delivery (in person or by commercial courier) to: FWS CS Administrator U.S. Department of Education Campus-Based Operations 830 First Street, NE Room 61D4 Washington, DC 20002 or Mail to: The same above address for hand delivery, except use Zip Code 20202-5453.	August 9, 2002
2. The Campus-Based Reallocation Form designated for the return of 2001-2002 campus-based funds.	The Reallocation Form must be submitted electronically and is located in the "Setup" section of the FISAP on the Internet at: www.cbfisap.sfa.ed.gov	August 23, 2002
3. The 2001-2002 Fiscal Operations Report and 2003-2004 Application to Participate (FISAP).	The FISAP is located on the Internet at the following site: www.cbfisap.sfa.ed.gov The FISAP form must be submitted electronically	October 1, 2002

	via the Internet. The combined signature page must be signed and submitted by hand delivery or mail to: The FISAP Administrator INDUS Corporation 1953 Gallows Road, Suite 300 Vienna, VA 22182.	
4. A request for a waiver of the 2003-2004 award year penalty for the under-use of 2001-2002 award year funds.	The request for a waiver can be found in Part II, Section C of the FISAP on the Internet at: www.cbfisap.sfa.ed.gov	February 14, 2003
5. The Institutional Application and Agreement for Participation in the Work-Colleges Program for the 2003-2004 award year.	The Institutional Application and Agreement for Participation in the Work-Colleges Program can be found in the "Setup" section of the FISAP on the Internet at: www.cbfisap.sfa.ed.gov The application and agreement must be signed and submitted by: Hand delivery (in person or by commercial courier) to: The Work-Colleges Program Campus-Based Operations U.S. Department of Education 830 First Street, NE Room 61J1 Washington, DC 20002 or Mail to: The same above address for hand delivery except use Zip Code 20202-5453.	March 14, 2003

BILLING CODE 4000–01–C

Proof of Delivery of Request and Supporting Documents Submissions Delivered by Mail

If you submit documents by mail when appliable, we accept as proof of mailing one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legible dated U.S. Postal Service postmark.

(3) Other proof of mailing or delivery acceptable to the Secretary.

We do not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. Institutions should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. Institutions are encouraged to use certified mail.

Submissions Delivered By Hand

If you submit documents by hand when applicable, either in person or by commercial courier, we accept hand deliveries between 8 a.m. and 5 p.m., Eastern time, Monday through Friday except Federal Holidays.

Sources for Detailed Information on These Requests

A more detailed discussion of each request for funds or waiver is provided in a specific ''Dear Partner'' letter, which is posted on the Department's Web page at least 30 days before the established deadline date for the specific request. Information on these items is also found in the Student Financial Aid Handbook.

Applicable Regulations: The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Program, 34 CFR part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New Restrictions on Lobbying, 34 CFR part 82.

(8) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(9) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Coppage, Director of Campus-Based Operations at (202) 377–3174 or via Internet: *Richard.Coppage@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format, (*e.g.* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 1087aa *et seq.;* 42 U.S.C. 2751 *et seq.;* and 20 U.S.C. 1070b *et seq.*

Dated: July 3, 2002.

Candace M. Kane,

Acting Chief Operating Officer, Federal Student Aid.

[FR Doc. 02–17205 Filed 7–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, NM

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Amended record of decision.

SUMMARY: The U.S. Department of Energy's National Nuclear Security Administration (DOE/NNSA) is amending the Record of Decision (ROD) for the *Environmental Impact Statement for the Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico,* DOE/EIS–0293 (Conveyance and Transfer EIS) to reflect changes in the need to retain certain portions of land tracts withheld earlier due to potential national security mission requirements for health and safety buffer areas relating to on-going and future operations. Specifically, DOE/NNSA has reassessed its need for certain portions of tracts to serve as health and safety buffer areas after: (1) Ceasing its tritium activities at Los Alamos National Laboratory's (LANL's) Technical Area 21 (TA–21); and (2) further refinement of its contemplated proton radiograph project at TAs –53 and –72. DOE/NNSA would no longer need to retain an 8-acre portion located at the western end of the Airport Tract for this purpose. Additionally, two portions of the White Rock Y Tract comprising about 74 acres of highway easement are no longer required as health and safety buffer areas.

FOR FURTHER INFORMATION CONTACT: For further information concerning the conveyance or transfer of land tracts or this amended ROD, contact Elizabeth Withers, NEPA Compliance Officer, Office of Los Alamos Site Operations, National Nuclear Security Administration, 528 35th Street, Los Alamos, NM 87004, 505–667–8690.

For further information concerning DOE's National Environmental Policy Act (NEPA) process, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586–4600, or leave a message at 1–800–472–2756.

Additional information regarding the DOE NEPA process and activities is also available on the Internet through the NEPA home page at *http://tis.eh.doe.gov/nepa.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Legal Requirements for Action

LANL is one of several national security laboratories that supports DOE/NNSA's responsibilities for national security, energy resources, environmental quality, and science. Located in north-central New Mexico, LANL is about 60 miles (97 kilometers) north-northeast of Albuquerque, and

about 25 miles (40 kilometers) northwest of Santa Fe. The small communities of Los Alamos townsite, White Rock, Pajarito Acres, the Royal Crest Mobile Home Park, and San Ildefonso Pueblo are located in the immediate vicinity of LANL. LANL occupies an area of approximately 27,832 acres (11,272 hectares), or approximately 43 square miles (111 square kilometers). DOE also has administrative control over other properties and land within Los Alamos County that total about 915 acres (371 hectares).

On November 26, 1997, Congress passed Public Law 105–119, the *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, Fiscal Year 1998* (''the Act''). Section 632 of the Act (42 U.S.C. 2391) directs the Secretary of Energy (the Secretary) to convey to the Incorporated County of Los Alamos, New Mexico, or to the designee of the County, and transfer to the Department of the Interior, in trust for the San Ildefonso Pueblo, parcels of land under the jurisdictional administrative control of the Secretary at or in the vicinity of LANL. Such parcels, or tracts, of land must meet suitability criteria established by the Act. The purpose of the conveyances and transfers is to fulfill the obligations of the United States with respect to Los Alamos, New Mexico, under sections 91 and 94 of the Atomic Energy Community Act of 1955 (AECA) (42 U.S.C. 2391, 2394). Upon the completion of the conveyance or transfer, the Secretary of Energy shall make no further financial assistance payments with respect to LANL under the AECA.

The Act sets forth the criteria, processes, and dates by which the tracts will be selected, titles to the tracts reviewed, environmental issues evaluated, and decisions made as to the allocation of the tracts between the two recipients. DOE's responsibilities under the Act include identifying potentially suitable tracts of land according to criteria set forth in the law (Land Transfer Report, April 1998); conducting a title search on each tract of land (Title Report, September 1998); identifying any environmental restoration and remediation that would be needed for each tract of land (Environmental Restoration Report, August 1999); conducting *National Environmental Policy Act of 1969* (NEPA) review of the proposed conveyance or transfer of the land tracts (the Conveyance and Transfer EIS, October 1999, distributed in January 2000); reporting to Congress on the results of the Environmental Restoration Report review and the final Conveyance and Transfer EIS (Combined Data Report, January 2000); and preparing a plan for conveying or transferring land according to the allocation agreement of parcels for Congress (Conveyance and Transfer Plan, April 2000). The Act further states that the Secretary must, to the maximum extent practicable, conduct any needed environmental restoration or remediation activities within 10 years of enactment (by November 26, 2007), and convey and transfer the tracts meeting the suitability criteria. Under the Act, DOE had no role in the designation of recipients nor how the parcels of land will be allocated between the recipients. As specified in Public Law 105–119, the actual disposition of each tract, or portion of a tract, would be subject to DOE's need for the individual tract, or a portion of the tract, to meet a national security mission support function, which could range from either direct or indirect activity involvement. Additionally, the disposition of each tract, or portion of a tract, would be subject to DOE's completion of any necessary environmental restoration or remediation required.

B. Previous Decision on the Conveyance and Transfer Actions

In the ROD for the Conveyance and Transfer EIS (65 FR, Number 54, Page 14952, March 20, 2000), DOE stated its decision to convey and transfer each of the ten subject tracts, either in whole or in part, by November 26, 2007. DOE's decision, consistent with the Preferred Alternative analyzed in the Conveyance and Transfer EIS, was to convey or transfer seven tracts in whole and three tracts (the Airport, TA–21 and White Rock Y Tracts) in part.

Two of the tracts, the Airport Tract and the White Rock Y Tract, would be partially transferred because of potential national security mission needs identified by DOE prior to the issuance of the ROD that require the retention of portions of these tracts. While both of the suitability criteria were considered in the formulation of the Preferred Alternative, the national security mission support criteria led DOE to the recognition that portions of the White Rock Y and the Airport Tracts may not be available for conveyance or transfer within the 10-year period specified by Public Law 105–119. This is due to operational requirements of existing and potential facilities within TA–21 and at TAs 53 and 72 located nearby, and the need for surrounding areas to be retained as security, health, and safety buffer areas. In the case of the Airport Tract, operational requirements of two existing facilities within TA–21 necessitate the retention of surrounding areas as security, health, and safety buffer areas. Engagement in a future project to construct and operate a proton radiography facility at LANL could result in an expanded security, health, and safety buffer area(s) being required that may intrude upon one or more of the tracts under consideration for disposal. Because the White Rock Y Tract is the nearest subject tract to one of the LANL locations that will likely be evaluated for the proton radiography project, DOE reduced this tract to a partial status for disposition in the 2000 ROD. In the ROD, DOE stated its intention to evaluate these existing and future projects and facility operational needs to determine whether to continue to retain portions of these two tracts. DOE stated in the ROD that it would make every effort to minimize the portions of the tracts it retains and only retain essential areas and convey or transfer the remainder of the tracts.

The Airport Tract consists of about 205 acres (83 hectares). Located east of the Los Alamos townsite, it is close to the East Gate Business Park. The Los Alamos Airport is located on part of the tract, while other portions of the tract are undeveloped. The White Rock Y Tract consists of about 540 acres (219 hectares). It is undeveloped and is portions of the tract are associated with the major transportation routes connecting Los Alamos with northern New Mexico. In January 2000, the two land recipients identified by the Act determined that: (1) The Airport Tract would be conveyed to the Incorporated County of Los Alamos; and, (2) the White Rock Y Tract would be divided between the Incorporated County of Los Alamos and the Secretary of the Interior, in trust for the Pueblo of San Ildefonso, with the highway easement area of that tract to be conveyed to the New Mexico Highway Department as the Incorporated County of Los Alamos's designee.

II. Need To Change the Conveyance and Transfer Portions of Tracts Retained

The original 2000 ROD for the Conveyance and Transfer EIS stated that for the tracts that were conveyed in part, DOE would continue to resolve outstanding national security mission support issues on the remaining portions of the tracts so that conveyance or transfer of those portions could occur before the end of the 2007 deadline stated in the Act. DOE could include deed restrictions, notices, and similar land use controls as deemed appropriate and necessary that are protective of

human health and safety to facilitate the transfer of the remaining portions of tracts.

A. Need for Existing Facilities at TA–21

In 2000, TA–21 Tract housed both the Tritium Systems Test Assembly (TSTA) and the Tritium Sciences and Fabrication Facility (TSFF) and both of these facilities were scheduled to continue operation past the year 2007. These two research facilities were identified as being needed for the national security mission and there were no formal plans to relocate them at that time. However, DOE was even then in the early stages of assessing the feasibility of relocating these operations to another facility within LANL. Over the past 24 months, DOE/NNSA has reviewed both its long-term continued need for the TSTA facility and the feasibility of relocating the TSFF tritium operations away from TA–21 to other tritium operations facilities at LANL. DOE/NNSA has concluded that the operation of the TSTA per se is no longer needed long term and may be discontinued. The nuclear material inventory of the TA–21 facilities has been reduced according to these plans. The discontinuance of the TSTA facility operations and removal of the TSFF facility operations, together with removal of TA–21 offices and assorted storage support facilities, would allow the facility and all of TA–21 to be completely decommissioned, decontaminated and demolished. It is unlikely however that all three of these steps in the dismantling of the technical area could occur before 2007. In the near term, however, DOE has determined that about an 8-acre portion of the Airport Tract at the western end of that tract (and situated to the northwest of TA21 and lying south of East Road) that had been retained for the purpose of serving as a health and safety buffer for the TA–21 TSTA and TSFF operations is no longer required for that purpose. This partial tract can now be conveyed.

B. Need for Future Facility at TA–53and TA–72

In a similar fashion, preliminary planning for the advanced proton radiography facility project has proceeded since March 2000. Expectations for operations at such a facility have been refined, as have the needs for siting such a facility within the TA–53 and TA–72 area. This has resulted in the reconsideration of the potential need for retaining two portions of the White Rock Y Tract that contain stretches of public roadways along State Road 502 and State Road 4. The two portions of the tract are located adjacent to the highway interchange area and total about 74 acres; one 54-acre tract portion is located to the west along State Road 502 and one 20-acre tract portion is located to the south along State Road 4. DOE has resolved that these two portions of the White Rock Y Tract are very unlikely to be needed for the purpose of serving as future health and safety buffers as long as provisions are made in the transfer documents to provide for access to the TAs–53 and –72. These portions of the tract can now be conveyed.

III. Amended Decisions

DOE/NNSA is modifying its decision on conveyance and transfer of certain land tracts at LANL as stated in the following paragraphs. Should DOE/NNSA=s no longer need portions of these and other tracts for national security mission support needs, DOE/NNSA will again reassess the retainment of partial tract areas and amend the Record of Decision, as needed.

- *The Airport Tract* consists of about 205 acres (83 hectares), east of the Los Alamos townsite and near the East Gate Business Park. The Los Alamos Airport is located on the northern part of the tract, while other portions of the tract are undeveloped.

Portions of the Airport Tract will continue to be needed to serve as health and safety buffer areas for the tritium activities while they continue within TA–21. In March 2000, DOE decided to convey or transfer part of the tract, approximately 110 acres North of East Road. With the shutdown of its tritium activities at TA–21, DOE/NNSA will now convey an additional approximately 8-acre portion of the Airport Tract.

- *The White Rock Y Tract* consists of about 540 acres (219 hectares). It is undeveloped and is associated with the major transportation routes connecting Los Alamos with northern New Mexico. Portions of the White Rock Y Tract may be needed to serve as health and safety buffer areas for proposed LANL activities occurring elsewhere, such as the proposed proton radiography project, in support of the national security mission. In the Conveyance and Transfer EIS discussion of the Preferred Alternative, DOE identified the potential partial transfer of the White Rock Y Tract due to the developing proton radiography project, and the tract was considered as one of the tracts that would be conveyed in whole or in part by 2007. In the March 2000 Record of Decision, DOE decided to convey or transfer only approximately 125 (50 hectares) acres, including the highway exchange and areas east of it, because of the potential national security mission need for the remainder of the tract. At this time, the DOE/NNSA will convey an approximately 54-acre parcel of the White Rock Y Tract comprised of the State Road 502 easement, and an approximately 20-acre parcel of the White Rock Y Tract comprised of the State Road 4 easement, both of which abut the highway exchange and eastern area previously identified for conveyance and transfer.

Issued in Washington, DC, on June 26, 2002.

John Gordon,

Administrator, National Nuclear Security Administration.

[FR Doc. 02–17120 Filed 7–8–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. PP–270]

Application for Presidential Permit: Lake Erie Link Limited Liability Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Lake Erie Link Limited Liability Company (''LEL LLC'') has applied for a Presidential permit to construct, operate, maintain, and connect an electric transmission line across the United States border with Canada.

DATES: Comments, protests, or requests to intervene must be submitted on or before August 8, 2002.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0001.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry Pell (Program Office) 202–586–3362 (or by electronic mail to: *Jerry.Pell@hq.doe.gov)* or Michael T. Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

On June 18, 2002, LEL LLC filed an application with the Office of Fossil

Energy (FE) of the Department of Energy (DOE) for a Presidential permit. The proposed LEL Project would consist of up to three underwater High Voltage Direct Current (HVDC) transmission systems under Lake Erie, each with a transfer capability of 325 megawatts (MW). The LEL Project would connect the control areas of the Ontario Independent Electricity Market Operator (IMO) with the control area of the Pennsylvania-New Jersey-Maryland Interconnection (PJM). In Ontario, the LEL Project would connect to the 230,000-volt (230-kV) bulk power system at the Nanticoke switchyard. In the U.S., the LEL Project would connect to the 345-kV bulk power system at the Erie West substation in Springfield Township, Pennsylvania.

The stated purpose of the LEL Project is to develop a fully controllable, bi-directional, electric transmission interconnection with a total transfer capability of up to 975 MW between Ontario and the U.S. Each of the HVDC transmission systems would consist of several miles of buried land-based HVDC cables, approximately 68 miles (109 kilometers (km)) of cable buried underwater in Lake Erie, and converter terminal facilities in Ontario and Pennsylvania.

The proposed LEL Project is exclusively a transmission system interconnection. The proposed project neither includes construction of any generation facilities in either country, nor is it dedicated or directly connected to any particular generation facility in either country. LEL LLC would sell the rights to transmit electricity over the LEL Project through an ''open season'' bidding process that has been approved in the Federal Energy Regulatory Commission's (FERC) LEL Project Authorization of February 13, 2002, Docket No. ER02–406–0002. LEL LLC states that it would not own or take title to any electric energy transmitted over the LEL Project.

Although LEL LLC's application to FERC contemplated a possible separate cable system constructed to Ohio, that option is not part of this application. LEL LLC represents that it has postponed further study of the Ohio cable system pending the results of the open season process. This Application proposes to construct cable systems exclusively to Pennsylvania.

Since the restructuring of the electric power industry began, resulting in the introduction of different types of competitive entities into the marketplace, DOE has consistently expressed its policy that cross-border trade in electric energy should be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated that policy in export authorizations granted to entities requesting authority to export over international transmission facilities. Specifically, DOE expects transmitting utilities owning border facilities constructed pursuant to Presidential permits to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the Federal Power Act and articulated in FERC Order No. 888, as amended (''Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities''). In furtherance of this policy, DOE intends to condition any Presidential permit issued in this proceeding on compliance with these open access principles.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with § 385.211 or § 385.214 of the FERC's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Additional copies of such petitions to intervene or protests also should be filed directly with: Michael D. Ernst, on behalf of Lake Erie Link LLC, 110 Turnpike Road, Suite 300, Westborough, MA 01581–2864, and with George H. Williams, Jr., Cameron McKenna LLP, 2175 K Street, NW., Washington, DC 20037–1809.

Before a Presidential permit may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (i.e., granting the Presidential permit, with any conditions and limitations, or denying the permit) pursuant to the National Environmental Policy Act of 1969 (NEPA). DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

The NEPA compliance process is a cooperative, non-adversarial, process involving members of the public, state and tribal governments and the Federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Also, participation in the NEPA process does not create party status in this proceeding. Notice of upcoming NEPA activities and information on how the public can participate in those activities will appear in the **Federal Register**.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be reviewed or downloaded from the Fossil Energy Home Page at: *http://www.fe.doe.gov.* Upon reaching the Fossil Energy Home page, select ''Electricity Regulation'' and then ''Pending Proceedings'' from the options menu.

Issued in Washington, DC, on July 2, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–17121 Filed 7–8–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–358–000]

Dominion Transmission, Inc.; Notice of Termination of Gathering Service

July 2, 2002.

Take notice that on June 7, 2001, Dominion Transmission Inc.(DTI) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering services currently being provided on specified uncertificated lines in Indiana County, Pennsylvania. DTI states that the uncertificated lines are being sold to Dominion Exploration and Production.

DTI states further that copies of this filing have been mailed to all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before

July 9, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17170 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–364–000]

Dominion Transmission, Inc.; Notice of Termination of Gathering Service

July 2, 2002.

Take notice that on June 4, 2001, Dominion Transmission Inc.(DTI) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering services currently being provided on a specified uncertificated line in Barbour County, West Virginia. DTI states that the uncertificated line and attached well are being sold to Lone Pine Operating Company, Inc.

DTI states further that copies of this filing have been mailed to all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 9, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17171 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–218–001]

East Tennessee Natural Gas Company; Notice of Compliance Filing

July 2, 2002.

Take notice that on June 27, 2002, East Tennessee Natural Gas Company (East Tennessee) submitted workpapers relating to its annual cashout report for the November 2000 through October 2001 period pursuant to Rate Schedules LMS-MA and LMS-PA of its FERC Gas Tariff. The purpose of this filing is to comply with the Commission's order issued on June 12, 2002 in Docket No. RP02–218.

East Tennessee states that copies of the filing were mailed to each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 9, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17168 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–368–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 2, 2002.

Take notice that on June 24, 2002, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 2002:

Second Revised Sheet No. 5
First Revised Sheet No. 54
First Revised Sheet No. 64
First Revised Sheet No. 73
First Revised Sheet No. 410
First Revised Sheet No. 411
First Revised Sheet No. 415
First Revised Sheet No. 416
Original Sheet No. 416A

Midwestern is proposing revised tariff sheets to revise and update the form of Exhibit A of Midwestern's Firm Gas Transportation Agreement and to add an Exhibit A to the form of the Interruptible Gas Transportation Agreement in order to clearly state the terms of a transportation agreement without necessitating that agreements be filed as non-conforming agreements. In addition, Midwestern proposes to revise provisions in its tariff to allow the Company and shipper to mutually agree to a negotiated Fuel Retention and Loss Quantity percentage. Midwestern states that it is at risk for the recovery of the gas used for its system operations and lost and unaccounted for gas. Midwestern states that this proposal does not impact or increase the cost to the other shippers for fuel and loss and unaccounted gas. Any transportation agreements that contain a negotiated Fuel Retention and Loss Quantity percentage will be indicated on the list of Negotiated Rates Agreements and filed with the Commission.

Midwestern states that the proposed changes will provide more flexibility and greater ease for shippers to contract for transportation service.

Midwestern states that copies of this filing have been sent to all of

Midwestern's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17172 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–064]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

July 2, 2002.

Take notice that on June 25, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Third Revised Sheet No. 26P.02, to be effective June 25, 2002.

Natural states that the purpose of this filing is to implement an amendment to an existing negotiated rate transaction entered into by Natural and Dynegy Marketing and Trade under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17167 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–332–001]

Petal Gas Storage, L.L.C.; Notice of Compliance Filing

July 2, 2002.

Take notice that on June 27, 2002, Petal Gas Storage, L.L.C. (Petal), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Revised Sheet No. 61. Petal requests that this sheet be made effective June 1, 2002.

Petal submits this filing in compliance with the Commission's Order issued on May 30, 2002, directing Petal to revise its notification procedures for Rate Schedule AVS.

Petal states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17169 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–369–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 2, 2002.

Take notice that on June 25, 2002, Texas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective August 1, 2002:

Fifth Revised Sheet No. 146
Fifth Revised Sheet No. 234

Texas Gas states that this filing is being submitted pursuant to Commission Order No. 637, in which the Commission revised 18 CFR 250.16(b)(1) to no longer require that pipelines maintain a complete list of operating personnel and facilities shared by the interstate natural gas pipeline and its marketing or brokering affiliates within the pipeline's tariff.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17173 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–81–000, et al.]

Baconton Power LLC, et al.; Electric Rate and Corporate Regulation Filings

July 1, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Baconton Power LLC

[Docket No. EC02–81–000]

Take notice that on June 26, 2002, Baconton Power LLC (Baconton), filed with the Federal Energy Regulatory Commission (Commission), an application pursuant to sections 203 of the Federal Power Act, 16 U.S.C. 824b and part 33 of the Commission's regulations, 18 CFR part 33. Baconton requests authorization for an upstream restructuring of ownership of Baconton that will result in an indirect transfer control over Baconton and its jurisdictional facilities. Baconton also notifies the Commission regarding a change in the conditions existing at the time the Commission approved its market-based rate authority.

Comment Date: July 17, 2002.

2. American National Wind Power, Inc. and FPL Energy Green Mountain, LLC

[Docket No. EC02–82–000]

Take notice that on June 26, 2002, American National Wind Power, Inc. and FPL Energy Green Mountain, LLC (FPLE Green Mountain) tendered for filing with the Federal Energy Regulatory Commission (Commission), an application requesting all necessary authorizations under section 203 of the Federal Power Act for the sale by American National Wind Power, Inc. to FPLE Green Mountain of American National Wind Power, Inc.'s interest (indirectly through an affiliate) in a 10.4 MW wind-powered electric generating facility in Somerset County, Pennsylvania and a power sales contract.

Comment Date: July 17, 2002.

3. Sithe Energies, Inc.

[Docket No. EC02–83–000]

Take notice that on June 26, 2002, Sithe Energies, Inc. (Sithe) and Exelon Generation Company, LLC (Exelon Generation) (collectively, Applicants) filed with the Federal Energy Regulatory Commission (Commission), a joint application under section 203 of the Federal Power Act, requesting all authorizations necessary to transfer an indirect interest in certain jurisdictional facilities from Sithe to Exelon Generation. Sithe is engaged primarily, through various subsidiaries, in the development and operation of non-utility generation facilities. Exelon Generation is a public utility which owns and operates electric generating facilities and engaged in wholesale power and energy marketing and trading operations in the United States. Applicants state that the transaction will have no adverse effect on competition, rates or regulation.

Comment Date: August 26, 2002.

4. SOWEGA Power LLC

[Docket Nos. EC02–84–000 and ER99–3427–001]

Take notice that on June 26, 2002, SOWEGA Power LLC (SOWEGA), filed with the Federal Energy Regulatory Commission (Commission), an application pursuant to sections 203 of the Federal Power Act, 16 U.S.C. 824b and part 33 of the Commission's regulations, 18 CFR part 33. SOWEGA requests authorization for an upstream restructuring of ownership of SOWEGA Energy Resources, LLC (SER), SOWEGA's parent, that will result in an indirect transfer control over SOWEGA and its jurisdictional facilities. SOWEGA also informs the Commission of a change in the facts relied upon in granting its market-based rate authority as a result of the upstream change in control

Comment Date: July 17, 2002.

5. New England Power Pool

[Docket No. ER02–1755–001]

Take notice that on June 24, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted in the above-captioned docket a supplemental filing amending its May 7, 2002 filing which requested that the Robert E. McLaughlin Trust (the Trust) be accepted for membership in NEPOOL. The supplemental filing requests that the May 7 filing be amended to reflect the request that the Trust be accepted for membership in NEPOOL as a Governance Only End User.

The NEPOOL Participants Committee states that copies of these materials were sent to all persons identified on the service list in the above-captioned docket.

Comment Date: July 15, 2002.

6. Southern California Edison Company

[Docket No. ER02–2136–000]

Take notice that on June 21, 2002, Southern California Edison Company (SCE) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Notice of Cancellation of the Transmission Service Agreement between SCE and PacifiCorp (collectively, Parties) and all supplements thereto.

Comment Date: July 12, 2002.

7. Rowan County Power, LLC

[Docket No. ER02–2137–000]

Take notice that on June 21, 2002, Rowan County Power, LLC (Rowan County) tendered for filing an executed Service Agreement between Rowan County and the following eligible buyer, Progress Ventures, Inc. Service to this eligible buyer will be in accordance with the terms and conditions of Rowan County's Market-Based Rates Tariff, FERC Electric Tariff No. 1.

Rowan County requests an effective date of May 21, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: July 12, 2002.

8. PECO Energy Company

[Docket No. ER02–2138–000]

Take notice that on June 21, 2002 PECO Energy Company (PECO) submitted for filing a third Construction Agreement between PECO and Old Dominion Electric Cooperative (ODEC) related to the Rock Springs Electric Generation Facility, designated as Service Agreement 683 under PJM Interconnection L.L.C.'s (PJM) FERC Electric Tariff Fourth Revised Volume No. 1, to be effective on June 10, 2002.

Copies of this filing were served on ODEC and PJM.

Comment Date: July 12, 2002.

9. Ameren Services Company

[Docket No. ER02–2139–000]

Take notice that on June 21, 2002 , Ameren Services Company (ASC) tendered for filing a Firm Point-to-Point Transmission Service Agreement between ASC and Illinois Power. ASC asserts that the purpose of the Agreement is to replace the Agreement in Docket No. ER 02–889–000 with a revised Agreement.

Comment Date: July 12, 2002.

10. Millennium Power Partners, L.P.

[Docket No. ER02–2140–000]

Take notice that on June 21, 2002, Millennium Power Partners, L.P. (Millennium) tendered for filing a Power Purchase Agreement for power sales (Agreement) with PG&E Energy Trading-Power, L.P. (PGET) pursuant to which Millennium will sell electric wholesale services to PGET at market-based rates according to its FERC Electric Tariff, Original Volume No. 1.

Comment Date: July 12, 2002.

11. Xcel Energy Services, Inc.

[Docket No. ER02–2141–000]

Take notice that on June 24, 2002, Xcel Energy Services, Inc. (XES), on behalf of Southwestern Public Service Company (Southwestern), submitted for filing a Master Power Purchase and Sale Agreement between Southwestern and Colorado Springs Utilities (Colorado Springs), which is in accordance with Southwestern's Rate Schedule for Market-Based Power Sales (Southwestern FERC Electric Tariff, Second Revised Volume No. 3).

XES requests that this agreement become effective on June 12, 2002.

Comment Date: July 15, 2002.

12. Powerroots, LLC.

[Docket No. ER02–2142–000]

Take notice that on June 24, 2002, Powerroots, LLC. (Powerroots) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Powerroots Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Powerroots intends to engage in wholesale electric power and energy purchases and sales as a marketer. Powerroots is not in the business of generating or transmitting electric power.

Comment Date: July 15, 2002.

13. Duke Electric Transmission

[Docket No. ER02–2143–000]

Take notice that on June 24, 2002, Duke Electric Transmission (Duke) a division of Duke Energy Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission), a Service Agreement with PG&E Energy Trading-Power L.P., for Firm Transmission Service under Duke's Open Access Transmission Tariff. Duke requests that the proposed Service Agreement be permitted to become effective on May 16, 2002. Duke states that this filing is in accordance with part 35 of the Commission's Regulations, 18 CFR part 35, and that a copy has been served on the North Carolina Utilities Commission.

Comment Date: July 15, 2002.

14. Duke Electric Transmission

[Docket No. ER02–2144–000]

Take notice that on June 24, 2002, Duke Electric Transmission (Duke), a division of Duke Energy Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission), a Service Agreement with PG&E Energy Trading-Power L.P., for Non-Firm Transmission Service under Duke's Open Access to become effective on May 15, 2002. Duke states that this filing is in accordance with part 35 of the Commission's Regulations, 18 CFR part 35, and that a copy has been served on the North Carolina Utilities Commission.

Comment Date: July 15, 2002.

15. Entergy Services, Inc.

[Docket No. ER02–2145–000]

Take notice that on June 24, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Long-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and PG&E Energy Trading—Power, L.P.

Comment Date: July 15, 2002.

16. Entergy Services, Inc.

[Docket No. ER02–2146–000]

Take notice that on June 24, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Select Energy, Inc.

Comment Date: July 15, 2002.

17. Southern California Edison Company

[Docket No. ER02–2147–000]

Take notice that on June 25, 2002, Southern California Edison Company (SCE) tendered for filing revisions to the Amended and Restated Radial Lines Agreement (Agreement) between SCE and AES Huntington Beach L.L.C. (AES).

The revisions to the Agreement reflect the replacement of one set of failed Coupling Capacitor Voltage Transformers (CCVTs) installed on the Ellis No. 2 Line at the Huntington Beach Substation and installation of new CCVTs, which are planned to be in service by December 31, 2002.

Copies of this filing were served upon the Public Utilities Commission of the State of California and AES.

Comment Date: July 16, 2002.

18. Southern California Edison Company

[Docket No. ER02–2148–000]

Take notice that on June 25, 2002, Southern California Edison Company (SCE) submitted a Letter Agreement between SCE and Whitewater Energy Corporation (Whitewater)the Industry Urban Development Agency (Industry).

The Letter Agreement specifies the terms and conditions under which SCE will provide pre-interconnection activities including provides for engineering, design, procurement, and preparation of specifications necessary for SCE to perform the engineering, design, procurement, and preparation of specifications necessary for the interconnection facilities and distribution circuit extension required to provide Distribution Service to Industry by September 30, 2002. engineering, design, and procurement.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Industry.

Comment Date: July 16, 2002.

19. Virginia Electric and Power Company

[Docket No. ER02–2149–000]

Take notice that on June 25, 2002, Virginia Electric and Power Company (the Company) tendered for filing a Service Agreement by Virginia Electric and Power Company to EnergyUSA-TPC Corp. designated as Service Agreement

No. 19 under the Company's Wholesale Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 6, effective on June 15, 2000. The Company respectfully requests an effective date of June 1, 2002, as requested by the customer.

Copies of the filing were served upon EnergyUSA-TPC Corp., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: July 16, 2002.

20. Allegeny Energy Service Corporation on behalf of Buchanan Generation, LLC

[Docket No. ER02–2150–000]

Take notice that on June 25, 2002, Allegheny Energy Service Corporation on behalf of Buchanan Generation, LLC (Buchanan) filed Service Agreement No. 1 to add one (1) new Customer to the Market Rate Tariff under which Buchanan offers generation services. Buchanan proposes to make service available as of June 11, 2002 to Allegheny Energy Supply Company, LLC.

Copies of the filing have been provided to the Customer.

Comment Date: July 16, 2002.

21. Just Energy Ohio, LLC

[Docket No. ER02–2151–000]

Take notice that on June 25, 2002, Just Energy Ohio, LLC (Just Energy Ohio) petitioned the Federal Energy Regulatory Commission (Commission), for acceptance of Just Energy Ohio Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Just Energy Ohio intends to engage in wholesale electric power and energy purchases and sales as a marketer. Just Energy Ohio is not in the business of generating or transmitting electric power. Just Energy Ohio sells electricity to customers in various deregulated states.

Comment Date: July 16, 2002.

22. MidAmerican Energy Company

[Docket No. ER02–2152–000]

Take notice that on June 25, 2002, MidAmerican Energy Company (MidAmerican) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Service Agreement under Wholesale Market-Based Rate Tariff providing for Sales of Capacity and Energy and Resale of Transmission Rights between MidAmerican and Aquila Energy Marketing Corporation. MidAmerican seeks an effective date of December 1, 2000.

Comment Date: July 16, 2002.

23. ISO New England Inc.

[Docket No. ER02–2153–000]

Take notice that on June 27, 2002, ISO New England Inc. (ISO) made a filing under Section 205 of the Federal Power Act of changes to its Capital Funding Tariff. The ISO requests that the changes to the Capital Funding Tariff be allowed to go into effect on August 1, 2002.

Copies of the transmittal letter were served upon all Participants in the New England Power Pool (NEPOOL), as well as on the governors and utility regulatory agencies of the six New England States, and NECPUC. Participants were also served with the entire filing electronically. The entire filing is posted on the ISO's website (*www.iso-ne.com*).

Comment Date: July 11, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17174 Filed 7–8ndash;02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Surrender of License and Soliciting Comments, Motions to Intervene, and Protests

July 2, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: License Surrender for the Fort Halifax Project.

b. *Project No*: 2552–058.

c. *Date Filed*: June 20, 2002.

d. *Applicant*: FPL Energy Maine Hydro LLC (FPL).

e. *Name of Project*: Fort Halifax.

f. *Location*: The project is located on the Sebasticook River, in Kennebec County, Maine.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact*: F. Allen Wiley, FPL Energy Maine Hydro LLC, 160 Capitol Street, Augusta, ME 04330, (207) 623–8413.

i. *FERC Contact*: Any questions on this notice should be addressed to either Mrs. Jean Potvin at (202) 219–0022, or e-mail address: *jean.potvin@ferc.gov* or Mr. Robert Fletcher at (202) 219–1206, or e-mail address: *robert.fletcher@ferc.gov*.

j. *Deadline for filing comments and or motions*: August 5, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426. Please include the project number (P–2552–058) on any comments or motions filed.

k. *Description of Request*: FPL proposes to surrender the license for the Fort Halifax Project. As part of its request, FPL proposes to remove a 72-foot section of the spillway to provide permanent fish passage. The remainder of the dam will remain intact. The partial removal of the dam will result in a lowering of the Fort Halifax impoundment directly upstream of the dam by as much as 25 feet. The partial dam removal will make an additional 5.2 miles of riverine habitat available to anadromous fish using the Kennebec River drainage system.

l. *Location of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling

(202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17165 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–10–000]

Enogex, Inc.; Notice of Technical Conference

July 2, 2002.

Take notice that a technical conference will be held on Friday, July 12, 2002, at 9 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17166 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Participation at MISO-PJM-SPP Single Market Design Forum Meeting

July 2, 2002.

The Federal Energy Regulatory Commission hereby gives notice that on July 11, 2002, members of its staff will attend the meeting of the MISO-PJM-SPP Single Market Design Forum meeting, concerning the development of a joint and common wholesale energy market for the Midwest Independent Transmission System Operator, Inc. (MISO), PJM Interconnection (PJM) and Southwest Power Pool, Inc. (SPP) regions. The staff's attendance is part of the Commission's ongoing outreach efforts. The meeting is sponsored by MISO, PJM and SPP, and will be held on July 11, 2002, 10 a.m. at the Minneapolis Airport Marriot, 2020 East 79th Street, Bloomington, MN 55425. This meeting is open to the public. The meeting may discuss matters at issue in Docket No. RM01–12–000, Electricity Market Design and Structure.

For more information, contact Mike Gahagan, Vice President, Chief Information Officer & Chief Strategic Officer, Midwest Independent Transmission System Operator, Inc. at (317) 249–5450, or Lawrence R. Greenfield, Senior Counsel, Federal Energy Regulatory Commission at (202) 208–0415 or *lawrence.greenfield@ferc.gov*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17164 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0037; FRL–7187–9]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 22 2002 to June 22, 2002, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

DATES: Comments identified by the docket ID number OPPT–2002–0037 and the specific PMN number, must be received on or before August 8, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0037 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'','' Regulations and Proposed Rules, and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket ID number OPPT–2002–0037. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B– 607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0037 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPPT–2002–0037 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 22 2002 to June 22, 2002, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The

''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 87 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/02 TO 06/22/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0698	05/22/02	08/20/02	Dow Corning Corporation	(G) Adhesive	(G) Treated metal oxide
P–02–0699	05/22/02	08/20/02	CBI	(G) Open non-dispersive use	(G) Substituted aminophenyl substituted heteropolycycle, salt
P–02–0700	05/23/02	08/21/02	3M Company	(G) Protective coating	(G) Fluorochemmical acrylate polymer
P–02–0701	05/23/02	08/21/02	CBI	(S) Pigment dispersant	(S) 2-propenoic acid, 2-methyl-, polymer with phosphinicobis(oxy-2,1-ethanediyl) bis[2-methyl-2-propenoate] and 2-(phosphonooxy) ethyl 2-methyl-2-propenoate, peroxydisulfuric acid ([(ho)s(o)2]2o2) disodium salt-initiated, sodium salts
P–02–0702	05/23/02	08/21/02	CBI	(S) Pigment dispersant	(S) 2-propenoic acid, 2-methyl-, polymer with phosphinicobis(oxy-2,1-ethanediyl) bis[2-methyl-2-propenoate] and 2-(phosphonooxy) ethyl 2-methyl-2-propenoate, peroxydisulfuric acid ([(ho)s(o)2]2o2) disodium salt-initiated, ammonium salts
P–02–0703	05/23/02	08/21/02	CBI	(S) Pigment dispersant	(S) 2-propenoic acid, 2-methyl-, polymer with phosphinicobis(oxy-2,1-ethanediyl) bis[2-propenoate] and 2-(phosphonooxy) ethyl 2-propenoate, peroxydisulfuric acid ([(ho)s(o)2]2o2) disodium salt-initiated, sodium salts
P–02–0704	05/23/02	08/21/02	CBI	(S) Pigment dispersant	(S) 2-propenoic acid, 2-methyl-, polymer with phosphinicobis(oxy-2,1-ethanediyl) bis[2-propenoate] and 2-(phosphonooxy) ethyl 2-propenoate, peroxydisulfuric acid ([(ho)s(o)2]2o2) disodium salt-initiated, ammonium salts
P–02–0705	05/24/02	08/22/02	International specialty products	(S) Component of coatings for digital printing paper	(S) Sulfuric acid, diethyl ester, compound with nu-[3-(dimethylamino)propyl]-2-methyl-2-propenamide polymer with 1-ethenyl-2-pyrrolidinone, sulfate
P–02–0706	05/28/02	08/26/02	Piedmont Chemical Industries I, LLC	(S) Dyeing assistant for polyester	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, esters with polyethylene-polypropylene glycol
P–02–0707	05/28/02	08/26/02	Ciba Specialty Chemicals Corporation	(S) Photoacid generator for resists in semiconductor and display manufacturing	(G) Camphorsulfonate
P–02–0708	05/28/02	08/26/02	Cytec Industries Inc.	(G) Crosslinking agent (substance a and b)	(G) Multifunctional polycarbodiimide (substance a and b)
P–02–0709	05/28/02	08/26/02	Cytec Industries Inc.	(G) Crosslinking agent (substance a and b)	(G) Multifunctional polycarbodiimide (substance a and b)
P–02–0710	05/28/02	08/26/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with ethylenediamine and fatty amines
P–02–0711	05/28/02	08/26/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with, ethylenediamine, 2-methyl-1,5-pentanediamine and fatty amines
P–02–0712	05/28/02	08/26/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with 2-methyl-1,5-pentanediamine and fatty amines
P–02–0713	05/28/02	08/26/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with ethylenediamine and fatty amines

I. 87 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/02 TO 06/22/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0714	05/28/02	08/26/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with ethylenediamine, 2-methyl-1,5-pentanediamine and fatty amines
P–02–0715	05/28/02	08/26/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with fatty amines and 2-methyl-1,5-pentanediamine
P–02–0722	05/29/02	08/27/02	CBI	(G) Destructive use	(G) Halogenated titanium amide
P–02–0723	05/29/02	08/27/02	CBI	(G) Destructive use	(G) Halogenated titanium amide
P–02–0724	05/30/02	08/28/02	CBI	(G) Nickel and nikel alloy electroplating complex	(G) Alklyamine metal complexes
P–02–0729	05/31/02	08/29/02	Solutia Inc.	(S) Resin for industrial paints	(G) Acrylic copolymer
P–02–0730	05/31/02	08/29/02	CBI	(G) Chemical intermediate	(G) Polytertiaryamine glycol
P–02–0731	06/04/02	09/02/02	CBI	(G) Raw material used to manufacture processing aid	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, reaction products with polyethylenepolyamines
P–02–0732	06/04/02	09/02/02	GE Silicones	(S) Intermediate	(G) Alkyl hydride silicone
P–02–0733	06/04/02	09/02/02	GE Silicones	(G) Formulation additive	(G) Alkyl silicone
P–02–0734	06/04/02	09/02/02	GE Silicones	(G) Formulation additive	(G) Crosslinked alkyl silicone
P–02–0735	06/04/02	09/02/02	CBI	(S) Resin for spray applied coatings	(G) Acid functional polyester resin amine salted
P–02–0736	06/04/02	09/02/02	CBI	(S) Coating for synthetic polymers.	(G) Aqueous dispersion of a polyester based aliphatic polyurethane.
P–02–0737	06/04/02	09/02/02	CBI	(G) Colorant for coating compositions	(G) Naphthalenesulfonic acid derivative
P–02–0738	06/05/02	09/03/02	CBI	(G) Adhesive for open, non-dispersive use	(G) Polymer of castor oil, alkylene ether glycol and isophorone diisocyanate
P–02–0739	06/05/02	09/03/02	CBI	(G) Inhibitor	(G) Amine salt
P–02–0740	06/05/02	09/03/02	CBI	(G) Sealant additive	(G) Polyether isocyanate
P–02–0741	06/06/02	09/04/02	Dic Imaging Products USA, Inc.	(G) Charge enhancing additive	(S) Piperazine, polymer with 1,6-dichlorohexane*
P–02–0742	06/04/02	09/02/02	CBI	(G) Component of a plastic disc.	(G) Polyurethane
P–02–0743	06/07/02	09/05/02	Eastman Kodak Company	(S) Adhesion promoter for paints	(G) Modified polyolefin
P–02–0744	06/07/02	09/05/02	CBI	(G) Dyestuff	(G) Lithium salt of azo bridged acid
P–02–0745	06/10/02	09/08/02	CBI	(G) Open, non-dispersive (chelating agent)	(G) Aqueous solution of iminodisuccinic acid ammonium salt
P–02–0746	06/10/02	09/08/02	E.I. Dupont de Nemours and Company, Inc.	(G) Extruded parts and films	(G) Aromatic - aliphatic polyamide
P–02–0747	06/10/02	09/08/02	CBI	(G) Film additive	(G) Amine polymer salt
P–02–0748	06/10/02	09/08/02	Hybrid Plastics, Inc.	(G) Thermoplastic polymer additive (open, non-dispersive use)	(S) Heptacyclo[11.11.1.13, 11.15,21.17, 19.19,17.115,23] dodecasiloxane, dodecaphenyl-
P–02–0749	06/10/02	09/08/02	Hybrid Plastics, Inc.	(G) Thermoplastic polymer additive (open, non-dispersive use)	(S) Pentacyclo[9.5.1.13, 9.15,15.17,13]octasiloxane, octakis(2-methylpropyl)-
P–02–0750	06/10/02	09/08/02	Hybrid Plastics, Inc.	(G) Polymer additive (open, non-dispersive)	(S) Pentacyclo[9.5.1.13, 9.15,15.17, 13]octasiloxane, octamethyl-
P–02–0751	06/10/02	09/08/02	Hybrid Plastics, Inc.	(G) Polymer additive (open, non-dispersive)	(S) Pentacyclo[9.5.1.13, 9.15,15.17, 13]octasiloxane, octaphenyl-
P–02–0752	06/10/02	09/08/02	E.I. Dupont de Nemours and Company, Inc.	(S) Isolated intermediate	(G) Salt of aromatic acids and aliphatic amine
P–02–0753	06/11/02	09/09/02	Ciba Specialty Chemicals Corporation	(S) Photoresist for electronics industry; color filter resist for manufacturing of color filters	(G) Oxime ester
P–02–0754	06/11/02	09/09/02	Solutia Inc.	(S) Cross-linker for industrial coatings	(G) Amine modified epoxy resin
P–02–0755	06/11/02	09/09/02	CBI	(G) Adhesives for open, non-dispersive use	(G) Polymer of oxirane, mono[(C_{12}–C_{14}-alkoxy)methyl] derivative and alkyamine
P–02–0756	06/11/02	09/09/02	Solutia Inc.	(S) Cross-linker for industrial coatings	(G) Amine modified epoxy resin
P–02–0757	06/11/02	09/09/02	CBI	(G) An open non-dispersive use	(G) Rosin modified phenolic resin

I. 87 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/02 TO 06/22/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0758	06/12/02	09/10/02	Loctite Corporation	(S) A component of adhesive formulations for general indusrial bonding applications	(S) Poly(oxy-1,4-butanediyl), alpha-[[[3,3,5-trimethyl-5-[[[[[[[[[[3,3,5-trimethyl-5-[[[[2-[(2-methyl-1-oxo-2-propenyl)oxy [ethoxy]carbonyl]amino]methyl] cyclohexyl]amino]carbonyl] oxy]methyl]tricyclodecyl] methoxy]carbonyl]amino]methyl] cyclohexyl[amino]carbonyl]-omega-[[[[3,3,5-trimethyl-5- [[[[[[[[[3,3,5-trimethyl-5-[[[[2- [(2-methyl-1-oxo-2-propenyl)oxy]ethoxy] carbonyl]amino]methyl]cyclohexyl] amino]carbonyl]oxy]methyl] tricyclodecyl]methoxy] carbonyl]amino]methyl] cyclohexyl]amino]carbonyl]oxy]-
P–02–0759	06/12/02	09/10/02	The Dow Chemical Company	(G) Thin film dielectric layers for microelectronic applications	(G) Silsesquioxane, siloxane
P–02–0760	06/11/02	09/09/02	CBI	(G) All purpose cleaner and paint reemover	(G) Hydroxal fatty acids esters
P–02–0761	06/14/02	09/12/02	Ethox Chemicals, LLC	(S) Pariffin wax additive	(S) Octadecanoic acid, 2-[[2,2-bis[[(1-oxooctadecyl) oxy]methyl]butoxy]methyl]- 2-ethyl-1,3-prop anediyl ester
P–02–0762	06/14/02	09/12/02	CBI	(G) Open, non-dispersive (binder in coatings applications)	(G) Polyester polyol
P–02–0763	06/14/02	09/12/02	Ashland Inc.	(G) Open, dipersive-used in reinforced molding operations	(G) Unsaturated polyester
P–02–0764	06/14/02	09/12/02	The Dow Chemical Company	(G) Coating	(G) Aspartic ester
P–02–0765	06/12/02	09/10/02	CBI	(G) Lubricant, for oil fields.	(G) Alkyl phosphate ester
P–02–0766	06/14/02	09/12/02	CBI	(S) Flame retardant for plastic articles	(G) Polyphosphoric acids, amine salt
P–02–0767	06/14/02	09/12/02	CBI	(G) Component of odorant compositions for highly dispersive applications	(G) Substituted alkene
P–02–0768	06/17/02	09/15/02	IFS Industries, Inc.	(S) Panel assembly	(G) Isocyanate terminated hot melt polyurethane adhesive
P–02–0769	06/17/02	09/15/02	IFS Industries, Inc.	(S) Panel assembly	(G) Isocyanate terminated hot melt polyurethane adhesive
P–02–0770	06/17/02	09/15/02	IFS Industries, Inc.	(S) Panel assembly	(G) Isocyanate terminated hot melt polyurethane adhesive
P–02–0771	06/17/02	09/15/02	CBI	(S) Resin for inks; resins for coatings and adhesives	(G) Polyether polyurethane
P–02–0772	06/18/02	09/16/02	Cognis Corporation	(G) Surfactant	(S) D-glucopyranose, oligomeric, 2-ethylhexyl glycosides
P–02–0773	06/18/02	09/16/02	Warner-Jenkinson Company, Inc.	(G) Intermediate	(G) Remazolamine
P–02–0774	06/18/02	09/16/02	Danisco USA Inc.	(S) Plasticizer for pvc + other plastics/films; colorant carrier for plastics; dye dispersant for hot melt inks	(S) Octadecanoic acid, 12-(acetyloxy)-, 2,3-bis(acetyloxy)propyl ester(9ci)
P–02–0775	06/20/02	09/18/02	The Dow Chemical Company	(G) Binder for recycled plastic and rubber	(G) 1,1′methylenebis[diisocyanato] benzene, polyetherpolyol polymer
P–02–0776	06/20/02	09/18/02	CBI	(G) Chemical intermediate	(G) Alkoxylated aromatic aldehyde
P–02–0777	06/20/02	09/18/02	CBI	(G) Chemical intermediate	(G) Alkoxylated aromatic aldehyde
P–02–0778	06/20/02	09/18/02	R. T. Vanderbilt Company, Inc.	(S) Antioxidant/anti-wear additive for lubricants	(G) Dialkyl dithiocarbamate ester
P–02–0779	06/20/02	09/18/02	R. T. Vanderbilt Company, Inc.	(S) Antioxidant/anti-wear additive for lubricants	(G) Dialkyl dithiocarbamate ester
P–02–0780	06/20/02	09/18/02	R. T. Vanderbilt Company, Inc.	(S) Antioxidant/anti-wear additive for lubricants	(G) Dialkyl dithiocarbamate ester
P–02–0781	06/20/02	09/18/02	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–02–0782	06/20/02	09/18/02	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–02–0783	06/20/02	09/18/02	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore

I. 87 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/02 TO 06/22/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0784	06/20/02	09/18/02	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–02–0785	06/20/02	09/18/02	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–02–0786	06/20/02	09/18/02	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–02–0787	06/21/02	09/19/02	CBI	(G) Component of coating with open use	(G) Epoxy functional styrenated methacrylate
P–02–0788	06/21/02	09/19/02	CBI	(S) Industrial uv coatings and inks	(G) Urethane acrylate ester
P–02–0789	06/21/02	09/19/02	The Dow Chemical Company	(S) Ultraviolet curable binder for overprint varnish; ultraviolet curable binder for inks; ultraviolet curable binder for wood coatings	(G) Ultraviolet-curable resin
P–02–0790	06/21/02	09/19/02	The Dow Chemical Company	(S) Ultraviolet curable binder for overprint varnish; ultraviolet curable binder for inks; ultraviolet curable binder for wood coatings	(G) Ultraviolet-curable resin
P–02–0791	06/21/02	09/19/02	The Dow Chemical Company	(S) Ultraviolet curable binder for overprint varnish; ultraviolet curable binder for inks; ultraviolet curable binder for wood coatings	(G) Ultraviolet-curable resin
P–02–0792	06/21/02	09/19/02	The Dow Chemical Company	(S) Ultraviolet curable binder for overprint varnish; ultraviolet curable binder for inks; ultraviolet curable binder for wood coatings	(G) Ultraviolet-curable resin
P–02–0793	06/21/02	09/19/02	The Dow Chemical Company	(S) Ultraviolet curable binder for overprint varnish; ultraviolet curable binder for inks; ultraviolet curable binder for wood coatings	(G) Ultraviolet-curable resin
P–02–0794	06/21/02	09/19/02	The Dow Chemical Company	(S) Ultraviolet curable binder for overprint varnish; ultraviolet curable binder for inks; ultraviolet curable binder for wood coatings	(G) Ultraviolet-curable resin

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 2 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 05/22/02 TO 06/22/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–02–0007	06/20/02	08/04/02	ITW Devcon	(G) Oil resistant industrial coating	(G) Isocyanati-terminated polyurethane prepolymer
T–02–0008	06/21/02	08/05/02	CBI	(G) Cleaning hydrotrope	(G) Monoalkyl quaternary ammonium salt

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 44 NOTICES OF COMMENCEMENT FROM: 05/22/02 TO 06/22/02

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0173	05/31/02	05/06/02	(S) Tridecene
P–00–0377	06/14/02	05/16/02	(G) Fluoroolefin copolymer
P–00–0419	06/04/02	04/18/02	(G) Polycarbonate polyester
P–00–1117	06/19/02	05/29/02	(G) Alkenyl keto acid
P–00–1165	06/18/02	05/15/02	(G) Fluoropolyether derivative
P–01–0075	06/14/02	06/11/02	(G) Substituted benzofuranone
P–01–0590	05/24/02	10/03/01	(G) Substituted amido benzoic acid ester
P–01–0622	06/11/02	05/16/02	(G) Substituted ppvs (poly-p-phenylen-vinylens)

III. 44 NOTICES OF COMMENCEMENT FROM: 05/22/02 TO 06/22/02—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–01–0727	06/20/02	05/20/02	(G) Modified acrylic resin
P–01–0920	06/14/02	05/15/02	(G) Polymer ester of mono and dibasic acids
P–01–0923	06/18/02	06/10/02	(G) Cycloalkyl acetate
P–01–0924	05/30/02	05/03/02	(G) Carbo cyclic oxime
P–01–0928	06/20/02	06/10/02	(G) Alkoxysilane
P–02–0063	05/24/02	04/26/02	(S) Cyclohexanecarboxylic acid, 1,4-dimethyl-, methyl ester (cis and trans); cyclohexanecarboxylic acid, 1,3-dimethyl-, methyl ester (cis and trans)
P–02–0101	06/11/02	05/08/02	(G) Substituted pyridinedicarboxylic acid
P–02–0126	06/14/02	05/09/02	(G) Polymer ester of mono and dibasic acids
P–02–0136	06/19/02	06/05/02	(G) Polyester polyurethane
P–02–0142	05/23/02	05/10/02	(G) Urethane acrylate
P–02–0149	06/17/02	05/16/02	(G) Alkyl octanal
P–02–0171	06/21/02	05/29/02	(G) Organophosphorous salt
P–02–0173	06/05/02	05/07/02	(S) N-ethyl-n-(3-methylphenyl) propionamide
P–02–0194	05/28/02	05/04/02	(G) Aliphatic urethane
P–02–0195	06/10/02	05/23/02	(G) Fluorochemical urethane
P–02–0204	05/30/02	05/17/02	(G) Polyurethane resin dispersion
P–02–0206	05/30/02	05/17/02	(G) Polyurethane resin despersion
P–02–0208	06/06/02	05/20/02	(G) Siloxane polyol ester
P–02–0237	06/11/02	05/24/02	(G) Acrylic polymer
P–02–0243	06/14/02	05/17/02	(G) Isocyanate terminated urethane polymer
P–02–0255	06/04/02	05/02/02	(G) Polyester polyether isocyanate
P–02–0261	05/30/02	05/10/02	(G) Piperidinol
P–02–0289	06/04/02	05/16/02	(S) Carbonic acid, dimethyl ester, polymer with 1,4-cyclohexanedimethanol and 1,6-hexanediol
P–02–0293	05/30/02	05/17/02	(G) Acrylic polymer
P–02–0321	06/05/02	05/17/02	(G) Ethoxy alkene
P–02–0323	05/24/02	05/09/02	(G) Modified fatty acid ester
P–02–0325	06/07/02	05/06/02	(G) Polyurethane prepolymer
P–02–0330	05/29/02	05/07/02	(G) Polyalkylene glycol, alkyl ether, reaction products with diisocyanatoalkane and polyalkylene glycol
P–02–0346	06/10/02	05/22/02	(G) Alkyd resin
P–02–0347	06/03/02	05/13/02	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, esters with high-boiling $C_{6–10}$ alkene hydroformylation products
P–02–0372	06/04/02	05/21/02	(G) Bifunctional reactive azo dye
P–02–0375	06/04/02	05/21/02	(G) Bifunctional reactive azo dye
P–02–0405	06/18/02	06/11/02	(G) Polyester-type polyurethane
P–98–0393	05/30/02	05/13/02	(G) Aqueous polyurethane dispersion
P–99–1037	06/13/02	06/10/02	(G) Alkylphenol mannich
P–99–1163	06/06/02	05/07/02	(S) Palladium(2-), tetraamine-, [sp-4-1]-, carbonate (1:2)

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: July 2, 2002.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–17191 Filed 7–8–02; 8:45 am]

BILLING CODE 6560–50–S

COUNCIL ON ENVIRONMENTAL QUALITY

National Environmental Policy Act Task Force

AGENCY: Council on Environmental Quality.

ACTION: Notice and request for comments.

SUMMARY: The Council on Environmental Quality (CEQ) has formed a National Environmental Policy Act (NEPA) task force (Task Force) composed of representatives from a variety of Federal agencies. The purpose of the NEPA Task Force is to seek ways to improve and modernize NEPA analyses and documentation and to foster improved coordination among all levels of government and the public. Federal agencies' planning and decision-making processes (analyses conducted and documents produced) using NEPA can obtain higher levels of efficiency, clarity and ease of management through the improved use of existing authorities; better information management; improved interagency and intergovernmental collaboration; and the use of new technologies. CEQ invites comments on the proposed nature and scope of NEPA Task Force activities identified in this notice and solicits examples of effective NEPA implementation practices to develop a publication of case studies including examples of best practices.

DATES: Written comments should be submitted on or before August 23, 2002.

ADDRESSES: Electronic or facsimile comments are preferred because federal offices experience intermittent mail delays from security screening. Electronic written comments can be sent to the NEPA Task Force through the NEPA Task Force link on the CEQ web site at *http://www.whitehouse.gov/ceq.* Written comments may be faxed to the NEPA Task Force at (801) 517–1021. Written comments may also be submitted to the NEPA Task Force, P.O. Box 221150, Salt Lake City, UT 84122. Public comments received by the NEPA Task Force will be available via the NEPA Task Force link on the CEQ web site at *http://www.whitehouse.gov/ceq.* after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Rhey Solomon at (202) 456–5432.

SUPPLEMENTARY INFORMATION: On May 20, 2002, CEQ established a NEPA Task Force to review the current NEPA implementing practices and procedures in the following areas: Technology and information management; interagency and intergovernmental collaboration including joint-lead processes; programmatic analyses and subsequent tiered documents; and adaptive management. In addition, the NEPA Task Force will look at other NEPA implementation issues such as the level of detail included in agencies' procedures and documentation for promulgating categorical exclusions; the structure and documentation of environmental assessments; and implementation practices that would benefit other agencies. CEQ envisions the information gained and disseminated by the NEPA Task Force will help federal agencies update their practices and procedures and better integrate NEPA into federal agency decision making. At the end of six months, the NEPA Task Force will prepare a publication highlighting case studies and any best practices that prove worthy of broad dissemination. Additionally, the NEPA Task Force will make recommendations to CEQ regarding potential guidance and potential regulatory changes based upon the information collected. Any regulatory changes would require public notice and comment and be published in the **Federal Register.**

To further the work of the NEPA Task Force, CEQ requests public input on certain aspects of Federal agencies' implementation of the National Environmental Policy Act. To make the best use of comments and further refine the initial topic areas on which the Task Force will focus, please respond to the following questions to help the NEPA Task Force identify current best practices and specific opportunities to enhance the NEPA process. If you are submitting a proposed case study or best practice, please provide a short description of the case or practice and how it responded to the relevant questions below. If you are sending attachments or supporting documents with your comment, please send a hard copy of the documents or an e-mail with them directly attached to ensure delivery and receipt. While URL and web-site links are helpful, please provide the information in your comment and do not rely on URL and web-site links alone. To facilitate managing the comments, please identify the question number(s) to which you are responding in study areas A through F below.

A. *Technology, Information Management, and Information Security:* The NEPA Task Force will explore opportunities for utilizing information management technologies to enhance the effectiveness and efficiency of the NEPA process. Specific examples of innovative technical approaches to the assessment and communication of potential environmental impacts are sought. Examples include use of geographic information system (GIS) software, document creation and comment management systems. The handling of sensitive infrastructure and operational information will be reviewed. The Task Force seeks your input on this topic and requests responses to the following questions.

1. Where do you find data and background studies to either prepare NEPA analyses or to provide input or to review and prepare comments on NEPA analyses? The information may include scientific and statistical information in printed or electronic form. Examples include but are not limited to species or wetlands inventories, air quality data, field surveys, predictive models, and trend analyses.

2. What are the barriers or challenges faced in using information technologies in the NEPA process? What factors should be considered in assessing and validating the quality of the information?

3. Do you maintain databases and other sources of environmental information for environmental analyses? Are these information sources standing or project specific? Please describe any protocols or standardization efforts that you feel should be utilized in the development and maintenance of these systems.

4. What information management and retrieval tools do you use to access, query, and manipulate data when preparing analyses or reviewing analyses? What are the key functions and characteristics of these systems?

5. What are your preferred methods of conveying or receiving information about proposed actions and NEPA analyses and for receiving NEPA documents (e.g., paper, CD–ROM, web-site, public meeting, radio, television)? Explain the basis for your preferences.

6. What information management technologies have been particularly effective in communicating with stakeholders about environmental issues and incorporating environmental values into agency planning and decision making (e.g., web sites to gather public input or inform the public about a proposed action or technological tools to manage public comments)? What objections or concerns have been raised concerning the use of tools (e.g., concerns about broad public access)?

7. What factors should be considered in balancing public involvement and information security?

B. *Federal and Inter-governmental Collaboration:* The NEPA Task Force will identify current best practices with regard to collaboration among Federal agencies and on an inter-governmental basis with Tribal, State and local governing entities in developing environmental analyses and participating in the NEPA process. The Task Force seeks your input on this topic and requests responses to the following questions (when answering the following questions, please indicate your role and experiences with NEPA).

1. What are the characteristics of an effective joint-lead or cooperating agency relationship/process? Provide example(s) and describe the issues resolved and benefits gained, as well as unresolved issues and obstacles. Such examples may include, but are not limited to, differences in agencies' policies, funding limitations, and public perceptions.

2. What barriers or challenges preclude or hinder the ability to enter into effective collaborative agreements that establish joint-lead or cooperating agency status?

3. What specific areas should be emphasized during training to facilitate joint-lead and cooperating agency status?

C. *Programmatic Analysis and Tiering:* Opportunities to facilitate timely planning and decision-making to reduce or eliminate redundant and duplicative analyses through the use of programmatic and tiered analyses will be explored. To date, Federal agencies have used programmatic analyses to address a range of issues from facility and land use planning to broad categories of actions, or to sequencing or staging actions. All of these analyses may have subsequent tiered analyses. The Task Force seeks your input on this topic and requests responses to the following questions.

1. What types of issues best lend themselves to programmatic review, and how can they best be addressed in a programmatic analysis to avoid duplication in subsequent tiered analysis? Please provide examples with brief descriptions of the nature of the action or program, decisions made, factors used to evaluate the appropriate depth of the analyses, and the efficiencies realized by the analysis or in subsequent tiers.

2. Please provide examples of how programmatic analyses have been used to develop, maintain and strengthen

environmental management systems, and examples of how an existing environmental management system can facilitate and strengthen NEPA analyses. Examples of an environmental management system may include but are not limited to systems certified under ISO 14001 (further information on ISO 14001 can be found on the Web at *http://es.epa.gov/partners/iso/iso.html).*

D. *Adaptive Management/Monitoring and Evaluation Plans:* The CEQ report, ''The National Environmental Policy Act: A study of Its Effectiveness After Twenty-five Years'', recognized that by incorporating adaptive management into their NEPA analyses, agencies can move beyond simple compliance and better target environmental improvement. An adaptive environmental management approach can respond to uncertainty and the limits of knowledge and experience in making decisions. Such an approach allows for approval of an action with uncertain outcomes by establishing performance-based environmental parameters or outcomes and monitoring to ensure that they are achieved. When those parameters or outcomes are not met, corrective changes would be triggered, for instance to ensure that significant environmental degradation does not occur. The Task Force seeks your input on this topic and requests responses to the following questions.

1. What factors are considered when deciding to use an adaptive management approach?

2. How can environmental impact analyses be structured to consider adaptive management?

3. What aspects of adaptive management may, or may not, require subsequent NEPA analyses?

4. What factors should be considered (e.g., cost, timing, staffing needs, environmental risks) when determining what monitoring techniques and levels of monitoring intensity are appropriate during the implementation of an adaptive management regime? How does this differ from current monitoring activities?

E. *Categorical Exclusions:* Agencies can identify categories of actions that do not individually or cumulatively have a significant effect on the human environment and which, therefore, do not require preparation of an Environmental Assessment or an Environmental Impact Statement. The NEPA Task Force will consider the bases and process for establishing categorical exclusions. The Task Force seeks your input on this topic and requests responses to the following questions.

1. What information, data studies, etc., should be required as the basis for establishing a categorical exclusion?

2. What points of comparison could an agency use when reviewing another agency's use of a similar categorical exclusion in order to establish a new categorical exclusion?

3. Are improvements needed in the process that agencies use to establish a new categorical exclusion? If so, please describe them.

F. *Additional Areas for Consideration:* In addition to the topics described above, the NEPA Task Force will consider comments on NEPA practices that would improve and modernize NEPA implementation.

For example, the NEPA Task Force requests public comment on the appropriate utility of and structure of format for environmental assessment documents.

The Nepa Task Force will use the information and comments it receives to identify, evaluate, and make recommendations on improving NEPA implementation and to prepare case studies that include examples of best practices.

Public comments are requested by August 23, 2002.

Dated: July 2, 2002.

James L. Connaughton,

Chairman, Council on Environmental Quality.

[FR Doc. 02–17082 Filed 7–8–02; 8:45 am]

BILLING CODE 3125–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 1, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments September 9, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, 445 12th Street, SW, Room 1–C804, Washington, DC 20554 or via the internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith Boley Herman at 202–418–0214 or via the internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0713.

Title: Alternative Broadcast Inspection Program (ABIP) Compliance Notification.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions.

Number of Respondents: 50 respondents; 2,500 responses.

Estimated Time Per Response: .084 hours (5 minutes).

Total Annual Burden: 250 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Needs and Uses: The FCC's Enforcement Bureau formed the ABIP in response to the downsizing of the field offices, and feedback from broadcast station licensees. Entities, usually state broadcast associations, conduct inspections of broadcast stations on a voluntary basis and notify the local FCC District Office, in writing via letter or electronic mail, of those stations that pass the ABIP inspection. This information is used by FCC staff to determine overall compliance with FCC rules, and determine which broadcast

stations will not be subject to random inspections conducted by the FCC's District Offices.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–17034 Filed 7–8–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 23, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Wayne A. Stroup, Garrison, North Dakota; to acquire voting shares of North Star Holding Company, Inc., Jamestown, North Dakota, and thereby indirectly acquire voting shares of Stutsman County State Bank, Jamestown, North Dakota.

Board of Governors of the Federal Reserve System, July 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–17069 Filed 7–8–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 24, 2002.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. F. Kemper Freeman, Jr., Betty J. Freeman, Suzanne L. McQuaid, Amy C. Schreck, Bellevue Square Managers I Limited Partnership, and Bellevue Square Managers, Inc., all of Bellevue, Washington; to acquire ownership of 15.85 percent of First Mutual Bancshares, Inc., Bellevue, Washington, and thereby indirectly acquire First Mutual Bank, Bellevue, Washington.

Board of Governors of the Federal Reserve System, July 3, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–17184 Filed 7–8–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309–4470:

1. GB&T Bancshares, Inc., Gainesville, Georgia; to acquire 100 percent of the voting shares of Hometown Bank of Villa Rica, Villa Rica, Georgia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Aviston Financial Corporation, Trenton, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Aviston Bancorp, Inc., Aviston, Illinois, and thereby indirectly acquire State Bank of Aviston, Aviston, Illinois.

C. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Hazen Bancorporation, Inc., Hazen, North Dakota; to acquire 15.5 percent of the voting shares of North Star Holding Company, Inc., Jamestown, North Dakota, and thereby indirectly acquire voting shares of Stutsman County State Bank, Jamestown, North Dakota.

2. McIntosh County Bank Holding Company, Inc., Ashley, North Dakota; to acquire 30.9 percent of the voting shares of North Star Holding Company, Inc., Jamestown, North Dakota, and thereby indirectly acquire voting shares of Stutsman County State Bank, Jamestown, North Dakota.

3. Wishek Bancorporation, Inc., Hazen, North Dakota; to acquire 30.9 percent of the voting shares of North Star Holding Company, Inc., Jamestown, North Dakota, and thereby indirectly acquire voting shares of Stutsman County State Bank, Jamestown, North Dakota.

Board of Governors of the Federal Reserve System, July 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–17068 Filed 7–8–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. United Community Bankshares of Florida, Inc., Orlando, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank of Mid-Florida, Lake Mary, Florida.

2. United Community Bankshares of Florida, Inc., Orlando, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of United Heritage Bank, Orlando, Florida.

Board of Governors of the Federal Reserve System, July 3, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–17185 Filed 7–8–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on July 11–12, 2002

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Correction.

SUMMARY: This correction notice changes the time of the public comments at the President's Council on Bioethics' fifth meeting from 3 pm ET, on Thursday, July 11, 2002 to 11:30 am ET, on Friday, July 12, 2002.

DATES: The meeting will take place Thursday, July 11, 2002, from 8:30 am to 4:45 pm ET, and Friday, July 12, 2002, from 8:30 am to 12:15 pm ET.

ADDRESSES: Ritz-Carlton, Washington, DC, 1150 22nd Street, NW., Washington, DC 20037.

PUBLIC COMMENTS: The meeting agenda will be posted at *http://www.bioethics.gov.* Written statements may be submitted by members of the public for the Council's records. Please submit statements to Ms. Diane Gianelli, Director of Communications, (tel. 202/296–4669 or e-mail *info@bioethics.gov).* Persons wishing to comment in person may do so during the hour set aside for this purpose beginning at 11:30 am ET, on Friday, July 12, 2002. Comments will be limited to no more than five minutes per speaker or organization. Please give advance notice of such statements to Ms. Gianelli at the phone number given above, and be sure to include name, affiliation, and a brief description of the topic or nature of the statement.

FOR FURTHER INFORMATION CONTACT: Diane Gianelli, 202/296–4669, or visit *http://www.bioethics.gov.*

Dated: June 28, 2002.

Dean Clancy,

Executive Director, The President's Council on Bioethics.

[FR Doc. 02–17041 Filed 7–8–02; 8:45 am]

BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Planning Ideas

AGENCY: Agency for Healthcare Research and Quality, HHS

ACTION: Notice.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) invites recommendations for future initiatives in areas identified as priorities in the Agency's current strategic plan which can be viewed at *http://www.AHRQ.gov/about/stratpln.htm.* This plan describes the framework that the Agency will use to guide the development and implementation of budget proposals for Fiscal Years 2004 and 2005 as well as decisions on resource allocations for research, translation (including tool development), dissemination, and evaluation activities that will facilitate the implementation of research findings at all levels of the health care system.

Nature of Recommendations

AHRQ encourages written suggestions from users of AHRQ research information and stakeholders for future Agency activities. Submissions should provide the following:

- A description of the focus of the activity and its alignment with Agency priorities;
- The gap addressed by the proposal;
- The population addressed by the activity;
- An indication of the health care issues that are of most concern for the proponent (of the activity);
- Background information to help AHRQ assess the urgency of the need for the results of the proposed projects (*i.e.*, realizing that projects undertaken by the Agency will take a year [minimally] to begin, what is the magnitude of the problem addressed, how soon could the results be implemented, and what change would be anticipated);
- An estimate of the budget required to adequately address the proposed activity;
- Potential partners for the Agency; and
- A description of the desired end product(s) (research knowledge; information; tools such as instruments for measurements, databases, informatics, and other applications that can be used to assess and improve care; or systems intervention) and how the product could be used in the health care system.

One of the criteria that will be used in prioritizing suggestions submitted will be the extend to which customers and stakeholders can point to examples of how prior results of the Agency's work have been used to improve health care as well as the impact of this use on quality, outcomes, costs, use or access.

DATES: The responses to this request will be accepted on an ongoing basis.

ADDRESSES: Submissions should be brief (no more than three pages) and may be in the form of a letter, preferably with an electronic file in a standard word processing format on a 3½ floppy disk,

or via e-mail. Responses to this request should be submitted to: Kathie Kendrick, Planning Officer, Agency for Healthcare Research and Quality, 2101 E. Jefferson Street, Suite 600, Rockville, Maryland 20852, *kkendrick@AHRQ.gov*.

In order to facilitate the handling of submissions, please include full information about the person submitting the recommendation: (a) Name, (b) title, (c) organization, (d) mailing address, (e) telephone number, and (f) e-mail address. Please do not use acronyms. Electronic submissions are also encouraged to *kkendrick@AHRQ.gov*.

All responses will be available for public inspection at AHRQ's Immediate Office of the Director, weekdays between 8:30 a.m. and 5 p.m. AHRQ will not respond to individual responses, but will consider all nominations in selecting topics. Arrangements for reviewing the submissions may be made by calling (301) 594–7196. Responses may also be accessed two weeks after receipt by the Agency through AHRQ's Electronic FOIA Reading Room also on AHRQ's web site.

AHRQ routinely publishes new research interests, policies, and initiatives in the **Federal Register** (see GPO Access web site *http://www.access.gpo.gov/su docs/aces/aces140.html*) and the NIH Guide for Grants and Contracts (see Funding Opportunities through AHRQ's web site *http://www.AHRQ.gov*). The budget priorities for each fiscal year published in the President's budget for the Department of Health and Human Services. Following is the web site: *http://www.hhs.gov/progorg/asmb/budget/fy2000.html*.

FOR FURTHER INFORMATION CONTACT: Additional information about AHRQ can be accessed on the AHRQ web site (*www.ahrq.gov*). The AHRQ strategic plan is available at *http://www.AHRQ.gov/about/stratpln.htm*. Information about topic nomination can be obtained by contacting: Kathie Kendrick, Planning Officer, Immediate Officer of the Director, 2101 E. Jefferson St., Suite 600, Rockville, Maryland 20852; telephone (301) 594–7196; E-mail address: *kkendrick@AHRQ.gov*.

SUPPLEMENTARY INFORMATION:

Background

The mission of AHRQ is to support, conduct, and disseminate research that improves access to care as well as the outcomes, quality, cost, and utilization of health care services. The Agency sponsors and conducts health care research that helps the American health care system, which includes patients, providers, plans, purchasers and policymakers, provide access to high quality, cost-effective services; be accountable and responsive to consumers and purchasers; and improve health status and quality of life.

Wide variations in practice patterns, quality, and outcomes continue, and a gap persists between what we know and the care that we deliver. It is clear today that AHRQ now has knowledge of what can be improved and can commit to a significant investment in promoting the adoption and use of research findings. This commitment also focuses on being able to demonstrate that the potential benefits demonstrated by the research are actually achieved in daily practice. This must be done while continuing to support new research on priority health issues and the development of new tools, so that in the future this knowledge and the new tools based on research findings can be translated and implemented to produce improved health care.

AHRQ Strategic Goals

The Agency has identified three strategic goals, each of which will contribute to improving the quality of health for all Americans.

1. Support Improvements in Health Outcomes

The field of health outcomes research studies the end results of the structure and processes of health care on the health and well-being of patients and populations. (Institute of Medicine, 1996) A unique characteristic of this research is the incorporation of the consumer's or patient's perspective in the assessment of effectiveness. Policymakers in the public and private sectors are also concerned with the end results of their investments in health care, whether at the individual, community, or population level.

AHRQ has a particular interest in outcomes research related to conditions that are common, expensive, and/or for which significant variations in practice or opportunities for improvement have been demonstrated. Also important is research linking types of delivery systems or processes by which care is provided with their effects on outcomes as well as research on clinical preventive services that may prevent premature death and disability in the United States.

2. Strengthen Quality Measurement and Improvement

At its most basic level, high quality health care is doing the right thing, at the right time, in the right way, for the right person. The challenge that clinicians and health system managers face every day is knowing what the right thing is, when the right time is, and what the right way is. Patients and their families are also confronted with making choices about treatments and care settings with little information on the relative quality, risks, and benefits of the options available to them. Policy makers, at all levels, also need quality information to support their deliberations. AHRQ has developed and tested measures of quality and studied the best ways to collect, compare, and communicate these data. The Agency will also focus on research that determines the most effective way to improve health care quality. This includes how to promote the use of information on quality through a variety of strategies such as determining effective ways to disseminate the information and illustrating the impact that the use of quality information can have on the provision and financing of health care.

3. Identify Strategies To Improve Access, Foster Appropriate Use, and Reduce Unnecessary Expenditures

Adequate access to health care services continues to be a challenge for many Americans. This is particularly so for the poor, the uninsured, members of minority groups, rural residents, and other vulnerable populations. In addition, the changing organization and financing of care has raised new questions about access to a range of health services, including emergency and specialty care. At the same time, examples of inappropriate use of care, including overutilization and misuse of services, continue to be documented. The increasing portion of our Nation's resources devoted to health care expenditures remains a concern. The continued growth in public spending for Medicare and Medicaid, in particular, raises important questions about the care delivered to the elderly, poor, children, and people with disabilities. Together, these factors require concerted attention to the determinants of access, use, and expenditures as well as effective strategies to improve access, contain costs, and assure appropriate and timely use of effective services.

Priority Populations

In addition to the strategic research goals, certain population groups warrant a special focus from AHRQ and the health services research community: Racial and ethnic minorities, women, children, the elderly, low-income populations, people living in rural areas, and people living with chronic illnesses and/or disabilities. These are

all groups for whom public policy struggles to find effective solutions to improve health care. Health services research has consistently documents the persistent, and at times great, disparities in health status and access to appropriate health care services for certain groups, notably racial and ethnic minorities and low income families and children. Gender-based differences in access, quality, and outcomes are also widespread, but whether these differences should be eliminated or are appropriate is not well understood. Despite the dramatic changes occurring in the organization and financing of children's health services, the knowledge base for guiding these changes or assessing their impact is less well developed than that for adults. Health care issues that exist for the elderly and for people with chronic illnesses and disabilities also require attention. Health services research should do a better job of bringing science-based information to bear on these disparities so that the health of these groups is enhanced.

Career Development

AHRQ invests in the training and career development of health services researchers to address the research, analytic and improvement needs of the changing health care system. Areas of focus include: (1) Training that is designed to reflect and incorporate evolving innovations in data systems and research tools so that the researchers of the future not only identify and address significant research questions, but also employ cutting edge methodological, analytic, and data handing techniques, including appropriate privacy and confidentiality safeguards; (2) carrier development that allows new investigators to obtain additional, concentrated research experience to facilities the transition from a trainee or fellow status to that of an independent investigator with an established area of research expertise and demonstrated productivity; (3) training that provides a solid foundation in general health services research methods and concepts within a multi-disciplinary environment with special emphasis placed on the unique needs of the identified population groups, i.e., minority populations and children. As part of this initiative, AHRQ is interested in recruiting Historically Black Colleges and Universities and Hispanic Service Institutions to apply independently or in partnership with other institutions, to develop programs to train health care research investigators; and (4) training that focuses on conducting research using personally identifiable health care information without injury or disclosure to individuals. This training will directly address the growing concerns about the privacy of health care information.

Types of AHRQ Activities in Support of the Goals

Producing meaningful contributions to the Nation and to research on health care requires continuous activity focused on iterative improvements in priority setting, on developing research initiatives, and on research products and processes. The following research cycle describes the processes AHRQ uses to conduct its ongoing activities in order to make the most productive use of its resources.

1. Needs Assessment

AHRQ conducts needs assessments through a variety of mechanisms including expert meetings, conferences, and consultations with stakeholders and customers of its reach, publishing notices for comment in the **Federal Register**, as well as regular meeting with its National Advisory Council and government leaders. The results of these assessments are used to determine and prioritize information needs.

2. Knowledge Creation

AHRQ supports and conducts research to produce the next generation of knowledge needed to improve the health care system. Building on the last 12 years of investment in outcomes and health care research, AHRQ will focus on national priority areas for which much remains unknown.

3. Translation and Dissemination

Simply producing knowledge is not sufficient; findings must be useful and made widely available to practitioners, patients, and other decision makers. In order to accelerate the pace of quality improvement, the focus must be on closing the gap between what we know and what we do. The Agency will systematically identify priority areas for improving care through integrating findings into practice and will determine the most effective ways of doing this. Additionally, AHRQ will continue to synthesize and translate knowledge into products and tools based on research findings that support its customers in problem-solving and decision making. It will then actively disseminate the knowledge, products, and tools to appropriate audiences. Effective dissemination involves forming partnerships with other organizations and leveraging resources.

4. Evaluation

Knowledge development is a continuous process. It includes a feedback loop that depends on evaluation of the research's utility to the end user and impact on health care. In order to assess the ultimate outcomes of AHRQ research, the Agency is placing increased emphasis on the evaluation of the impact and usefulness of Agency-supported work in health care settings and policymaking. The evaluation activities will include a variety of projects, from smaller, short-term projects that assess process, outputs, and interim outcomes to larger, retrospective projects that assess the ultimate outcomes/impact of AHRQ activities on the health care system.

AHRQ Customers

The AHRQ research agenda is designed to be responsive to the needs of its customers/stakeholders and what they value in health care. These include consumers and patients; clinicians and other providers; institutions; plans; purchasers; and policymakers in all sectors (e.g., Federal, State, and local governments; voluntary associations; international organizations; and foundations). All of these customers require evidence-based information to inform health policy decisions. Health policy choices in this context represent three general levels of decision making: (1) Clinical Policy Decisions—Information is used every day by clinicians, consumers, patients, and health care institutions to make choices about what works, for whom, when, and at what cost; (2) Health Care System Policy Decision—Health plan and system administrators and policymakers are confronted daily by choices on how to improve the health care system's ability to provide access to and deliver high-quality, high-value care; (3) Public Policy Decisions—Information is used by policymakers to expand their capability to monitor and evaluate the impact of system changes on outcomes, quality, access, cost, and use of health care and to devise policies designed to improve the performance of the system. These decisions include those made by Federal, State, and local policymakers and those that affect the entire population or certain segments of the public.

In summary, AHRQ seeks suggestions for agency activities within the framework of priorities set out in the AHRQ strategic plan, goals, activities, and customers, as described above.

Dated: June 10, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–17063 Filed 7–8–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ).

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Friday, July 26, from 8:30 a.m. to 4 p.m. and is open to the public.

ADDRESSES: The meeting will be held at the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 800, Washington, DC, 20201.

FOR FURTHER INFORMATION CONTACT: Anne Lebbon, Coordinator of the Advisory Council, at the Agency for Healthcare Research and Quality, 2101 East Jefferson Street, Suite 600, Rockville, Maryland, 20852, (301) 594–7216. For press-related information, please contact Karen Migdail at (301) 594–6120.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mr. Donald L. Inniss, Director, Office of Equal Employment Opportunity Program, Program Support Center, on (301) 443–1144 no later than July 22, 2002.

Agenda, roster, and minutes are available from Ms. Bonnie Campbell, Committee Management Officer, Agency for Healthcare Quality and Research, 2101 E. Jefferson Street, Suite 400, Rockville, Maryland, 20852. Her phone number is (301) 594–1846. Minutes will be available after August 30, 2002.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) established the National Advisory Council for Healthcare Research and Quality. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to actions of the Agency to enhance the quality, improve outcomes, reduce costs of health care services, improve access to such services through scientific research, and to promote improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of members of the public appointed by the Secretary and Federal ex-officio members.

II Agenda

On Friday, July 26, 2002, the meeting will begin at 8:30 a.m., with the call to order by the Council Chairwoman. The Acting Director, AHRQ, will present the status of the Agency's current research, programs, and initiatives. Tentative agenda items include discussions on research efforts with respect to health care costs, health information technology, and quality of care, and prevention. The official agenda will be available on AHRQ's website at *www.ahrq.gov* no later than July 8, 2002. The meeting will adjourn at 4 p.m.

Dated: June 27, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–17064 Filed 7–8–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02124]

Collaborative Efforts to Prevent Child Sexual Abuse; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for the project, ''Collaborative Efforts to Prevent Child Sexual Abuse (CSA)''. This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

Background

Approximately one million children in the United States annually are identified by child protective services as victims of maltreatment. Additionally, in 1999, over 88,000 substantiated or indicated cases of child sexual abuse were identified by the Administration on Children, Youth and Families. Child sexual abuse is associated with negative outcomes both in childhood (e.g., anxiety, depression, self-harming behavior, Post Traumatic Stress Disorder (PTSD), verbal and physical aggression, poor academic achievement, and low self-esteem) as well as in adulthood (e.g., anxiety, depression, self-harming behavior, substance abuse, PTSD, and high risk sexual behavior).

The goal of preventing child maltreatment requires a comprehensive approach that focuses on all forms of maltreatment including child sexual abuse. Whereas programs to prevent child physical abuse, emotional abuse, and neglect have focused their efforts on preventing perpetration, nearly all child sexual abuse prevention programs have focused on preventing victimization by teaching children personal safety skills. Some have argued that these children-focused programs are predicated on the belief that children can prevent their own sexual abuse. No matter what the basis, the victimization prevention programs are deeply entrenched (i.e. many schools, churches, and social organizations that deal with young children have them) and perpetration/offender based prevention programs are practically nonexistent.

A more comprehensive approach to the issue of child sexual abuse is the introduction of more perpetration/offender based prevention programs to complement the victimization prevention programs already in place. This announcement intends to support projects that utilize already existing infrastructures in order to broaden the prevention efforts. In every state, there are existing organizations whose mission is the prevention of child maltreatment or the prevention of sexual violence among adult women. In addition, there are organizations in the country that focus on the prevention of child sexual abuse perpetration. In the proposed project, the expertise of these agencies will be brought to bear on the issue of moving the field toward preventing perpetration.

The purpose of this program is to create statewide prevention collaboratives to promote the development and implementation of child sexual abuse prevention programs that focus on adult or community responsibility and response in the prevention of perpetration, rather than focusing solely on the prevention of victimization.

For the purposes of this announcement, a ''prevention collaborative'' includes efforts that are broadly defined and involves a partnership that combines the expertise of child abuse prevention, sexual abuse prevention and public health agencies/

organizations. In addition, the definition of child sexual abuse used for this project comes from the American Professional Society on the Abuse of Children (APSAC) Handbook on Child Maltreatment (2nd edition, 2002). The definition is as follows, ''Child Sexual abuse involves any sexual activity with a child where consent is not or cannot be given. This includes sexual contact that is accomplished by force or threat of force, regardless of the age of the participants, and all sexual contact between an adult and a child, regardless of whether there is deception or the child understands the sexual nature of the activity. Sexual contact between an older and a younger child also can be abusive if there is a significant disparity in age, development, or size, rendering the younger child incapable of giving informed consent. The sexually abusive acts may include sexual penetration, sexual touching, or non-contact sexual acts such as exposure or voyeurism.''

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Reduce the Risk of Child Maltreatment.

B. Eligible Applicants

Assistance will be provided only to:

(1) The health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments; or

(2) An agency or organization with state-wide reach and expertise in the primary and/or secondary prevention of child maltreatment or sexual assault prevention. These agencies/organizations could be governmental or non-governmental.

Only one application per state will be funded. State-level agencies and organizations are encouraged to collaborate in the submission of a single state application.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $400,000 is available in FY 2002 to fund approximately 2 awards. It is expected that the average award will be $200,000, ranging from $150,000 to $250,000. It is expected that the awards will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preferences

Preference will be given to applications that demonstrate that this project will be a collaborative effort involving state level entities (e.g., state public health agencies, other state governmental agencies, state level not-for-profit organizations) with expertise in child maltreatment prevention, sexual violence prevention and public health approaches to prevention.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Develop and conduct a baseline statewide inventory of child sexual abuse prevention programs including information on number of programs, intended audience, content, and resources devoted to programs.

b. Identify stakeholders, programs and institutions that should be involved in promoting programs that support adult or community responsibility and response to prevent perpetration.

c. Identify a perpetrator/offender-focused prevention program to be piloted in each state.

d. Implement and evaluate the chosen program in as many settings as possible.

e. Complete a follow-up statewide inventory of child sexual abuse programs.

f. Collaborate with other cooperative agreement recipients, CDC, and a CDC-selected evaluation contractor in the development of core components for the statewide inventory, perpetrator-focused prevention programs, and cross-site evaluation.

g. Attend and participate in technical assistance and planning meetings coordinated by the CDC for all cooperative agreement recipients (two staff members; two meetings per year in Atlanta; two days per meeting).

h. Submit required reports on time.

2. CDC Activities

a. Provide technical assistance and consultation, if requested, on all aspects of recipient activities, including:

(1) Development of the baseline statewide inventory of child sexual abuse prevention programs.

(2) Perpetrator-focused prevention

(3) Cross-site evaluation

b. Facilitate the cross-site evaluation in collaboration with cooperative agreement recipients.

c. Facilitate the technical assistance and planning meetings (two meetings per year in Atlanta, two days per meeting).

d. Review evaluation information for presentation and publication.

E. Content

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The proposal narrative should be no more than 15 pages, double-spaced, printed on one side, with one-inch margins and unreduced font.

The narrative should consist of at minimum:

1. Applicant Organization History, Description and Capacity
2. Applicant's Plan for Implementing this Cooperative Agreement
3. Applicant's Management and Staffing
4. Collaboration
5. Measures of Effectiveness
6.Budget

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification Form
Indirect Costs Rate agreement (if applicable)
Narrative

The application must be received by 5 p.m Eastern Time August 19, 2002. Submit the application to: Technical Information Management—PA02124, Procurement and Grants Office, Centers for Disease Control and Prevention 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of Effectiveness must relate to the performance goal stated in section ''A. Purpose'' of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Measures of Effectiveness (not rated)

The extent to which the applicant has provided measures of effectiveness.

2. Applicant Organization History, Description and Capacity (20 points)

The extent to which the applicant has documented:

a. Their history as well as their current ability to provide a leadership function in statewide efforts to prevent child abuse, sexual violence, or public health prevention.

b. Their history and capacity in providing leadership and guidance to local level efforts, including a clear description of their linkages with and role in support for local level efforts.

c. Their history and a description of their capacity to provide leadership in involving other agencies with statewide reach to carry out the objectives of this project.

d. Their organizational capacity to realize the objectives of the cooperative agreement.

3. Applicant's Plan for Implementing this Cooperative Agreement (35 points)

The extent to which the applicants work plan and timetable includes:

a. The identification of state level agencies/institutions/organizations to be named as members of the prevention collaborative, including a description of the areas of expertise covered by each; the specific roles and responsibilities of each in implementing this cooperative agreement; methods for making decisions; etc.

b. Memorandum of agreement and understanding or letters of support from these organizations as an appendix, and the extent to which these letters indicate that the applicant and the other collaborating organizations have established a ''working partnership'' which specifies the active roles each will have in the project.

c. Plans for baseline and follow-up statewide inventories of child sexual abuse prevention programs.

d. A description of the process used (or to be used) in identifying a perpetrator/offender-focused CSA prevention project for implementation (i.e., what evidence will be used to make this decision).

e. Plans to implement the pilot prevention program in as many settings as possible throughout the state, including a description of pilot site selection criteria.

f. Plans to evaluate the pilot prevention program including measures of effectiveness that will demonstrate the accomplishment of the identified objectives of the cooperative agreement. Measures should be objective/quantifiable and measure the intended outcome.

g. Plans to train and support staff regarding the responsibilities of this cooperative agreement, and the availability of staff and facilities to carry out this cooperative agreement.

4. Applicant's Management and Staffing (20 points)

The extent to which the applicant has included:

a. Their management operation, structure and/or organization. An organizational chart of the applicant's organization should be included as an Appendix. Additionally, the applicant should include within their management plan the specific role and mechanisms to be established to ensure effective coordination, communication and shared decision making among the involved agencies/organizations.

b. A staffing plan for the project, noting existing staff as well as additional staffing needs. The responsibilities of individual staff members including the level of effort and allocation of time for each project activity by staff position should be included. The specific staff positions within the other involved state level agencies, both in-kind and funded, should be described.

c. Resumes and/or position descriptions (i.e. for and in-kind and proposed positions to be funded under this cooperative agreement) should be included as an appendix. This should include the use of consultants, as appropriate, from the identified perpetrator focused program.

d. A continuation plan in the event that key staff leave the project, how new staff will be smoothly integrated into the project, and assurances that resources will be available when needed for this project

e. Previous experience of project staff to submit required reports on time

5. Collaboration (25 Points)

The extent to which the applicant:

a. Demonstrates an ability to identify and engage various stakeholders in past projects, and thus, its capacity to identify stakeholders that should be involved in promoting, implementing and evaluating programs that support adult or community responsibility and response to prevent CSA perpetration.

b. A willingness to collaborate with other cooperative agreement recipients and CDC in the development of core components for the statewide inventory, perpetrator/offender-focused prevention programs, and cross-site evaluation.

c. A willingness to attend and participate in technical assistance and planning meetings coordinated by the CDC for all cooperative agreement recipients (two staff members, two meetings per year in Atlanta, two days per meeting).

6. Proposed Budget Justification (Not Scored)

The extent to which the applicant's budget includes funds to participate in the CDC required meetings (two staff members, two meetings per year in Atlanta, 2 days per meeting) and includes sufficient funding to support national consultants and program

materials directed at perpetrator based CSA prevention.

The applicant should provide a detailed budget request and complete line-item justification of all proposed operating expenses consistent with the stated activities under this program announcement. Applicants should be precise about the purpose of each budget item and should itemize calculations wherever appropriate. The use of the sample budget included in the application kit is encouraged. These funds should not be used to supplant existing efforts.

7. The extent to which the applicant adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects. (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of the following:

1. Annual progress reports will be submitted as part of the grantee's continuation application. The progress report will include a data requirement that demonstrates measures of effectiveness. Specific guidance will be provided for the content of the progress reports.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the application kit.

AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301,317,and 391–394 of the Public Health Service Act, [42 U.S.C. 241, 247b, and 280b–280b–3], as amended. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where to Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

For business management technical assistance, contact: James Masone, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2736, Email address: *JMasone@cdc.gov.*

For program technical assistance, contact: Janet Saul, PhD, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Hwy, NE, Mailstop K60, Atlanta, GA 30341–1125, Telephone number: (770) 488–4733, Email address: *jsaul@cdc.gov.*

Dated: June 6, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–17113 Filed 7–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02184]

Monitoring Trends in Prevalence of Sexually Transmitted Disease (STD), Tuberculosis (TB), and Humans Immunodeficiency Virus (HIV) Risk Behaviors Among Men Who Have Sex With Men (MSM); Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a competitive cooperative agreement for Monitoring Trends in Prevalence of STDs, TB, and HIV Risk Behaviors among (MSM) in facilities providing health services to this population. This program addresses the ''Healthy People 2010'' focus area(s) of STD, HIV, and Immunization and Infectious Diseases.

Objectives

The objectives for this program are:

(1) To assess the prevalence of, and monitor trends in STDs, TB, and HIV risk behaviors among MSM in clinics serving a substantial number of HIV positive MSM, and;

(2) To enhance local prevention services for these populations.

Recent outbreaks of STDs and TB among MSM, many of whom are HIV positive, have identified substantial weaknesses in STD and TB surveillance and control efforts and the need for preventive efforts among this population. Prevention of STDs and HIV in this population is critical to preventing STD, TB, and HIV transmission.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for HIV, STD and TB Prevention: (1) Improve STD and TB surveillance and control efforts among the MSM population; and (2) Improve HIV and STD prevention programs and continuity of care in the MSM population.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 317 and 317E of the PHS Act, 42 U.S.C. 247b and 247b–6. The Catalog of Federal Domestic Assistance number 93.977.

C. Eligible Applicants

Limited Competition: Funding is limited to state and local governments that received funding under prior announcements.

Assistance will be provided only to project areas which received FY 1999, 2000, or 2001 Competitive Supplemental Funds For Comprehensive STD Prevention Systems for ''Monitoring Trends in Prevalence of STDs, TB, and HIV Risk Behaviors among MSM,'' Program Announcement 99000. Prior supplemental award recipients are uniquely qualified because they have an established prevalence monitoring project currently in place for STDs, TB, and HIV risk behaviors among MSM. Applicants should review section J. ''Where to Obtain Additional Information'' on page 21 of this program announcement.

D. Availability of Funds

Approximately $200,000 is available in FY 2002 to fund up to six awards. It is expected that the average award will be $45,000, ranging from $30,000 to $60,000. The awards will begin on or before September 30, 2002. Awards will be made for a 12-month budget period within a project period of up to three

years (funding estimates may change). Project areas are expected to sustain these projects beyond the period for which funding is provided.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by quality of quarterly data submitted and availability of funds.

Funding is viewed as money for an activity that is expected to continue, in full or in part, beyond the project period using other local or CDC funds.

1. Use of Funds

Funds are awarded for a specifically defined purpose and may not be used for any other purpose or program. Funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities. Funds must be used to improve the collection, management, and reporting of data and, if needed, to supplement prevention activities at participating facilities. Funds may not be used to provide medical care or for pharmaceuticals.

2. Recipient Financial Participation

Recipient financial participation is required for this program in accordance with this program announcement. Recipients will be required to provide 1:3 matching funds (i.e., $1 of new state or local, public or private resources for each $3 of federal resources awarded). New resources may include newly identified funds or newly identified in-kind resources. Matching funds may be used to support laboratory testing or personnel but may not be used for pharmaceuticals.

3. Funding Preferences

Funds may be awarded as to achieve geographical diversity.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Assess which HIV-care facilities in the project area perform routine STD screening. Preferably, facilities will be chosen where routine screening is conducted.

b. Collaborate with one or more facilities serving a total of approximately 25 different HIV-positive MSM per month. These may be primary care clinics, HIV clinics, managed care organizations, or other sites providing primary care services.

c. Provide STD testing data (optimally for chlamydia, gonorrhea, and syphilis) for at least 25 consecutive HIV-positive MSM per month. If a single facility does not have this many entrants or clinic visits per month, the recipient may identify additional facilities that would participate in providing the required sample size.

d. Each participating facility must conduct tuberculin skin tests (TSTs), placed using the Mantoux method, for MSM with HIV infection. For HIV-positive MSM tested for TB, information on history of prior TB disease, prior TST status, TST results, follow-up for TST-positive patients (chest X-ray results, therapy) is required.

e. For each person examined or tested, participating facilities must collect the following core data elements in a standardized format: date of visit, unique patient identification number, sex, age or date of birth, race/ethnicity, zip code or census tract of residence, gender of sex partners, STD symptoms, exam findings, and STD laboratory results (chlamydia, gonorrhea, and syphilis).

f. In addition, collecting the following HIV risk behavior and clinical data (for the last 30 days) is preferable, but not required: Self-identified sexual orientation; number of male and female sex partners; type of sex (oral/anal/vaginal); condom use with various types of sex; whether the person has anonymous sex; number of new sex partners; sex with a known HIV-infected partner; CD4 count; viral load; if currently on HAART therapy; and illicit drug use.

g. *Data management:* Data should be computerized, in line-listed format to facilitate local analyses and reported quarterly to CDC. Demonstrated capacity to organize, manage, and clean data.

h. *Data analysis and dissemination:* Demonstrated capacity to analyze data and disseminate findings to public health officials and community planning groups.

i. Commitment to and plan for long-term sustainability of the project.

j. Integrated involvement in this project by local STD, TB, and HIV/AIDS communicable disease surveillance units.

k. Electronically transmit data to CDC on a quarterly basis.

l. Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures must be objective/quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of the evaluation.

2. CDC Activities

a. Conduct one site visit to each funded project for technical assistance.

b. Provide technical assistance, if requested, in the design and conduct of the project.

c. As needed, assist in designing a data management system and as needed assist in designing data analyses to help guide STD and TB prevention and intervention activities.

F. Content

Letter of Intent (LOI)

An LOI is required for this program. The program announcement title and number must appear in the LOI. The narrative should be no more than two double-spaced pages, printed on one side, with one-inch margins, and unreduced fonts. Your letter of intent will be used only as an indicator of the number of applications CDC will receive and will assist CDC staff in preparing and coordinating the review process. Therefore, your letter of intent should state your plans to submit an application.

Use the information in the Program Requirements, Other Requirements, Evaluation Criteria, and this section to develop the application content. Describe your project plan, and budget as outlined below. Then review the evaluation criteria listed below. Your application will be evaluated on the criteria listed, so it is important to organize your application by these criteria. Applicants may submit more than one proposal, but the average award will be $45,000.

The narrative should be no more than ten double-spaced pages, and printed on one side with one-inch margins, unreduced fonts, and a number on each page. Applications with more than ten double-spaced pages will be returned and not reviewed. Please attach a budget with narrative and calculations to support all proposed amounts. Please provide only attachments or appendices that are directly relevant to this request for funding. The table, budget and attachments/appendices are not included in the count for the ten page limit.

Project Plan

Describe your project plan and include a time frame for implementation. Indicate what services will be provided and what medical and risk behavior data will be collected and provided to the local health department and to CDC. Describe the difficulties, if

any, in putting data in the standardized format Describe what changes, if any, would be made to the current system, with respect to collection and management of data and provision of medical services. If you cannot examine or test all HIV-positive MSM at participating facilities, describe to whom services would be offered, and explain how you would quantify acceptance of services. Briefly mention how you will disseminate the findings from this project and how this project will contribute to local planning for prevention of STDs, HIV infection, and tuberculosis.

Budget

Provide a justified budget for use of CDC funds. Describe any other STD-related projects funded by CDC that are currently in place or which will be implemented in the same facilities; describe any overlap with this project.

The budget will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of funds.

a. Submit a line-item itemized budget with narrative justification and any other information to demonstrate that the request for CDC assistance is consistent with the purpose and objectives of this cooperative agreement program;

b. Describe any other STD-related projects funded by CDC that are currently in place or which will be implemented in the same facilities; describe any overlap with this project.

c. For contracts, include the name of the person or firm to receive the contract, itemized budget with narrative justification, the method of selection, the period of performance, method of accountability, and a description of the contracted service requested.

G. Submission and Deadline

Letter of Intent (LOI)

On or before July 12,2002 submit the original and two copies of your letter of intent to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428) and, if applicable, the Optional Form 310, ''Protection of Human Subjects Assurance Identification/Certification/Declaration''. Forms are available in the application kit and at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

The application must be received on or before August 5, 2002. Submit your application to the: Technical Information Management Section, 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341.

Deadline: Letters of intent and applications shall be considered as meeting the deadline if they are received before 5 P.M. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Services or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals) as stated in section ''A. Purpose'' of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Adequacy of Study Participants (20 Points)

The extent to which the number of HIV positive MSM who will be routinely examined and tested and among whom data will be collected at the participating facilities meets or exceeds the requirement of 25 per month. (Provide letters of support from each participating facility documenting the ability to do this); and Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

A. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

B. The proposed justification when representation is limited or absent.

C. A statement as to whether the design of the study is adequate to measure differences when warranted.

D. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

2. Data Interpretation and Management (15 Points)

Demonstrated ability to manage, clean, and submit data in a timely way as demonstrated by previous involvement in similar projects.

3. Adequacy of Facility Data Collection Activities (15 Points)

The extent to which STD testing is provided at the facility(ies) and the standard data elements are routinely collected [ie. date of visit, sex, date of birth, race/ethnicity, zip code or census tract of residence, gender of sex partners, STD symptoms, exam findings, and STD laboratory results (chlamydia, gonorrhea, and syphilis).

4. Routine Data Collection (10 Points)

Extent to which the suggested data elements are routinely collected, including previous HIV test results, CD4 count, viral load, and behavioral risk variables (e.g., number of sex partners, type of sex [oral/anal].

5. Program Capacity (10 Points)

Evidence that TB testing is routinely provided for HIV-positive MSM at the facility(ies) and that the data elements for HIV-positive MSM (ie. history of prior TB, prior TST status, TST results, and follow-up chest X-ray results, and therapy) are routinely collected.

6. Project Assessment and Support (10 Points)

Provide letters of support from each participating facility. Describe how an assessment of STD testing in HIV-care facilities in the project area was performed, and provide evidence that facilities are chosen where routine STD screening is conducted.

7. Project Sustainability (10 Points)

Potential sustainability of project, as determined by the extent to which current project activities have been integrated with existing program activities, and local program support for the proposed project so that it may be continued Without federal funding beyond the project period.

8. Data Analysis and Dissemination (5 Points)

Demonstrated ability to analyze data and disseminate findings to public health officials and community planning groups.

9. Collaboration (5 Points)

Extent of participation by STD, TB, and HIV/AIDS communicable disease surveillance units, as indicated by letters of support.

10. Budget (Reviewed, But Not Scored)

The extent to which the itemized budget for conducting the project is reasonable and well justified.

11. Human Subjects (Not Scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable). Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

I. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Annual progress reports (The progress report will include a data requirement that demonstrates measures of effectiveness).
2. Financial status report, no more than 90 days after the end of the budget period, and
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To obtain business management technical assistance, contact: Gladys T. Gissentanna, Grants Management Specialist, Procurement and Grants Office, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146, Telephone: (770)488–2753, Email address: *gcg4@cdc.gov.*

For program technical assistance, contact: Catherine McLean, MD, Division of STD Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, MS E02, Atlanta, GA 30333, Telephone: (404)639–8467, Email: *cvm9@cdc.gov.*

Dated: July 2, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–17160 Filed 7–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Occupational Radiation and Energy-Related Research Grants, Program Announcement OH–02–002

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Occupational Radiation and Energy-Related Research Grants, Program Announcement OH–02–002.

Times and Dates: 8 a.m.–8:30 a.m., July 22, 2002 (Open), 8:40 a.m.–5 p.m., July 22, 2002 (Closed), 8 a.m.–5 p.m., July 23, 2002 (Closed).

Place: Brazilian Court Hotel, 301 Australian Avenue, Palm Beach, Florida 33480.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA OH–02–002.

This notice is being published less than fifteen days prior to meeting dates due to administrative oversight.

Contact Person for More Information: Pervis Major, Ph.D., Scientific Review Administrator, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, M/S B228, telephone (304) 285–5979.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 2, 2002.

Joe Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–17111 Filed 7–8–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Implementing Hazardous Substance Training for Emergency Responders, Announcement Number: OH–02–009

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Implementing Hazardous

Substance Training for Emergency Responders, RFA OH–02–009.

Times and Dates: 8 a.m.–8:30 a.m., July 24, 2002 (Open); 8:40 a.m.–5 p.m., July 24, 2002 (Closed).

Place: Brazilian Court Hotel, 301 Australian Avenue, Palm Beach, FL 33480, phone (561) 655–7740.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Deputy Director for Program Management, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA OH–02–009.

Contact Person for More Information: Roger Rosa, Ph.D., Scientific Review Administrator, National Institute for Occupational Safety and Health, CDC, 751H Hubert Humphrey Building, Washington, DC 20201, telephone (202) 205–7856.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 2, 2002.

Joe Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–17159 Filed 7–8–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement #02151]

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: A Research Study To Assess Multifaceted Fall Prevention Intervention Strategies Among Community-Dwelling Older Adults

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): A Research Study to Assess Multifaceted Fall Prevention Intervention Strategies Among Community-Dwelling Older Adults, Program Announcement #02151.

Times and Dates: 6: p.m.–6:30 p.m., July 28, 2002 (Open); 6:30 p.m.–8 p.m., July 28, 2002 (Closed); 9 a.m.–5 p.m., July 29, 2002 (Closed).

Place: The Westin Hotel (Atlanta Airport) 4736 Best Road, Atlanta, GA 30337. Phone: (404) 762–7676.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 02151.

Contact Person for More Information: Dr. Ann Dellinger, Epidemiologist, National Center for Injury Prevention and Control, CDC, 2495 Flowers Road, Atlanta, Georgia 30341; (770) 488–4811.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 2, 2002.

Joe Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–17161 Filed 7–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement # 02123]

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Multi-Level Parent Training Effectiveness Trial, Program Announcement #02072, and Parenting Program Attrition and Compliance Efficacy Trial

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Multi-Level Parent Training Effectiveness Trial, Program Announcement #02072, and Parenting Program Attrition and Compliance Efficacy Trial, Program Announcement #02123.

Times and Dates: 6 p.m.–6:30 p.m., July 28, 2002 (Open); 6:30 p.m.–8 p.m., July 28, 2002 (Closed); 8:30 a.m.–5 p.m., July 29, 2002 (Closed).

Place: The Westin Hotel (Atlanta Airport), 4736 Best Road, Atlanta, GA 30337, Phone: (404) 762–7676.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 02072 & PA# 02123.

Contact Person for More Information: Dr. Joanne Klevens, Epidemiologist, National Center for Injury Prevention and Control, CDC, 2939 Flowers Road, Atlanta, Georgia 30341; (770) 488–4330.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 2, 2002.

Joe Salter,

Acting Director, Management Analysis and Services Office, , Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–17162 Filed 7–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Injury Research Grant Review Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Injury Research Grant Review Committee (IRGRC).

Times and Dates: 6:30 p.m.–9:30 p.m., July 28, 2002. 8 a.m.–4:30 p.m., July 29, 2002.

Place: The Westin Atlanta Airport, 4736 Best Road, College Park, Georgia 30337.

Status: Open: 6:30 p.m.–7 p.m., July 28, 2002. *Closed:* 7 p.m.–9:30 p.m., July 28, 2002, through 4:30 p.m., July 29, 2002.

Purpose: This committee is charged with providing advice and guidance to the Secretary of Health and Human Services and the Director, CDC, regarding the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control and supports injury control research centers.

Matters to be Discussed: Agenda items include a budget update, recent awards, discussion of the review process and panelists responsibilities, and review of grant applications. Beginning at 7 p.m., July 28, through 4:30 p.m., July 29, the Committee will review individual research grant applications submitted in response to Program Announcements #02040, Violence-Related Injury Prevention Research; #02041, Traumatic Injury Biomechanics Research; #02126, Dissemination Research of Effective Interventions to Prevent Unintentional Injuries; and #02127, Acute Care, Rehabilitation and Disability Prevention Research; and discuss an injury control research center grant application. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Acting Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Richard W. Sattin, M.D., Acting Executive Secretary, IRGRC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE, M/S K58, Atlanta, Georgia 30341–3724, telephone 770/488–1658.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: July 1, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–17163 Filed 7–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0281]

Agency Information Collection Activities; Proposed Collection; Comment Request; General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements contained in existing FDA regulations regarding the general administrative procedures for a person to petition the Commissioner of Food and Drugs (the Commissioner) to issue, amend, or revoke a rule; file a petition for an administrative reconsideration or an administrative stay of action; and request an advisory opinion from the Commissioner.

DATES: Submit written or electronic comments on the collection of information by September 9, 2002.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60–day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions—21 CFR Part 10 (OMB Control No. 0910–0183)—Extension

The Administrative Procedures Act (5 U.S.C. 553(e)) provides that every agency shall give an interested person the right to petition for issuance, amendment, or repeal of a rule. Section 10.30 (21 CFR 10.30) sets forth the format and procedures by which an interested person may submit to FDA, in accordance with § 10.20 (21 CFR 10.20) (submission of documents to the Dockets Management Branch), a citizen petition requesting the Commissioner to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action.

The Commissioner may grant or deny such a petition, in whole or in part, and may grant such other relief or take other action as the petition warrants. Respondents are individuals or households, State or local governments, non-for profit institutions and businesses or other for-profit institutions or groups.

Section 10.33 (21 CFR 10.33) issued under section 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(a)), sets forth the format and procedures by which an interested person may request reconsideration of part or all of a decision of the Commissioner on a petition submitted under § 10.25 (21 CFR 10.25) (initiation of administrative proceedings). A petition for reconsideration must contain a full statement in a well-organized format of the factual and legal grounds upon which the petition relies. The grounds must demonstrate that relevant information and views contained in the administrative record were not previously or not adequately considered by the Commissioner. The respondent must submit a petition no later than 30 days after the decision involved. However, the Commissioner may, for good cause, permit a petition to be filed after 30 days. An interested person who wishes to rely on information or views not included in

the administrative record shall submit them with a new petition to modify the decision. FDA uses the information provided in the request to determine whether to grant the petition for reconsideration. Respondents to this collection of information are individuals of households, State or local governments, not-for-profit institutions, and businesses or other for-profit instructions who are requesting from the Commissioner a reconsideration of a matter.

Section 10.35 (21 CFR 10.35) issued under section 701(a) of the act, sets forth the format and procedures by which an interested person may request, in accordance with § 10.20 (submission of documents to the Dockets Management Branch), the Commissioner to stay the effective date of any administrative action.

Such a petition must: (1) Identify the decision involved, (2) state the action requested—including the length of time for which a stay is requested, and (3) include a statement of the factual and legal grounds on which the interested person relies in seeking the stay. FDA uses the information provided in the request to determine whether to grant the petition for stay of action.

Respondents to this information collection are interested persons who choose to file a petition for an administrative stay of action.

Section 10.85 (21 CFR 10.85), issued under section 701(a) of the the act, sets forth the format and procedures by which an interested person may request, in accordance with § 10.20 (submission of documents to the Dockets Management Branch), an advisory opinion from the Commissioner on a matter of general applicability. An advisory opinion represents the formal position of FDA on a matter of general applicability. When making a request, the petitioner must provide a concise statement of the issues and questions on which an opinion is requested, and, a full statement of the facts and legal points relevant to the request. Respondents to this collection of information are interested persons seeking an advisory opinion from the Commissioner on the agency's formal position for matters of general applicability.

FDA estimates the burden of this collection of information as follows:

TABLE 1.— ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10.30	150	3	450	12	5,400
10.33	10	1	10	10	100
10.35	13	1	13	10	130
10.85	3	1	3	16	48
Total					5,678

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates for this collection of information is based on agency records and experience over the past 3 years. Agency personnel handling the petitions for § 10.30 estimate 150 (citizen petitions) received by the agency annually, each requiring an average of 12 hours preparation time. Agency personnel handling the petitions for § 10.33 (administrative reconsideration of an action) estimate 10 requests are received by the agency annually, each requiring an average of 10 hours preparation time. Agency personnel handling the petitions for § 10.35 (administrative stay of an action) estimate 13 requests are received by the agency annually, each requiring an average of 10 hours preparation time. Agency personnel handling the petitions for § 10.85 (advisory opinions) estimate 3 requests are received by the agency annually, each requiring an average of 16 hours preparation time.

Dated: June 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–17077 Filed 7–8–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Director, National Institutes of Health (NIH), the authorities under Public Law 107–84, Muscular Dystrophy Community Assistance, Research and Education Amendments (MD–CARE) Act, Part A, Title IV, Section 404E(d) of the Public Health Service Act, as amended, to establish the Muscular Dystrophy Coordinating Committee.

I reserve to myself the authority to appoint members of the Coordinating Committee, including the Chair of the Coordinating Committee.

This delegation shall be exercised in accordance with the Department's applicable policies, procedures, guidelines and regulations. In addition, I ratify and affirm any actions taken by the NIH Director or his subordinates which involve the exercise of the authorities delegated herein prior to the effective date of this delegation.

The delegation is effective upon date of signature.

Dated: June 26, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–17129 Filed 7–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–27]

Notice of Proposed Information Collection: Comment Request; Capital Advance Program Requirements for Section 202 Housing for the Elderly, and Section 811 Housing for Persons With Disabilities

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or by electronic mail at *Wayne_Eddins@hud.gov*.

FOR FURTHER INFORMATION CONTACT: William Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1994 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information: (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Capital Advance Program Requirements for Section 202 Housing for the Elderly, and Section 811 Housing for Persons with Disabilities.

OMB Control Number, if applicable: 2502–0470.

Description of the need for the information and proposed use: This submission, for which the Department is requesting clearance, is to permit the continued processing of all Sections 202 and 811 capital advance projects that have not yet been finally closed. The submission includes processing of the application for firm commitment to final closing of the capital advance. The information collection is needed to assist HUD in determining the Owner's eligibility and capacity to finalize the development of a housing project under the Section 202 and Section 811 Capital Advance Programs. A thorough evaluation of an Owner's capabilities is critical to protect the Government's financial interest, and to mitigate any possibility of fraud, waste, and mismanagement of public funds.

Agency form numbers, if applicable: HUD–2476A, HUD–90163CA/–64CA/–65CA/–66CA/–67CA/–70CA/–71CA/–77CA, 91372A–CA, and 92004–F (VA26–8497A).

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 3,485, the number of respondents is 260 generating 260 annual responses, the frequency of response is on occasion, and the amount of time per response varies from 30 minutes to 6 hours.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 28, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–17050 Filed 7–8–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–28]

Notice of Proposed Information Collection: Comment Request; Deed-in-Lieu of Foreclosure (Corporate Mortgagors or Mortgagors Owning More Than One Property)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Deed-in-Lieu of Foreclosure (Corporate Mortgagors or Mortgagors Owning More than One Property).

OMB Control Number, if applicable: 2502–0301.

Description of the need for the information and proposed use: Mortgagees must obtain written consent from the National Servicing Center to accept a deed-in-lieu of foreclosure when the mortgagor is a corporate mortgagor or a mortgagor owns more than one property. Mortgagees must provide HUD with specific information. HUD uses this information collection to review specific requirements in assessing the validity of accepting a deed-in-lieu of foreclosure.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and

hours of response: The estimated total number of hours needed to prepare the information collection is 300, the number of respondents is 600 generating 600 annual responses, the frequency of response is on occasion, and the numbers of hours per response is 30 minutes.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 28, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–17051 Filed 7–8–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–29]

Notice of Proposed Information Collection: Comment Request; Procedures for Appealing Section 8 Rent Adjustments

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Procedures for Appealing Section 8 Rent Adjustments.

OMB Control Number, if applicable: 2502–0446.

Description of the need for the information and proposed use: Title II of the National Housing Act requires that the Department of Housing and Urban Development (HUD) regulate rents for certain cooperative and subsidized rental projects. Under this legislation, HUD is charged with the responsibility of determining the method of rent adjustments and facilitating these adjustments. Because rent adjustments are considered benefits to project owners, HUD must also provide some means for owners to appeal the decisions made by the Department of Contract Administrator. This appeal process, and the information collection included as part of the process, play an important role in preventing costly litigation and ensuring the accuracy of the overall rent adjustment process.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 2,500, the number of respondents is 1,250 generating 1,250 annual responses, the frequency of response is on occasion, and the number of hours per response average 2 hours.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 28, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–17052 Filed 7–8–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–30]

Notice of Proposed Information Collection: Comment Request; Assistance Payment Contract—Notice of (1) Termination, (2) Suspension, or (3) Reinstatement

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected

agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Assistance Payment Contract—Notice of (1) Termination, (2) Suspension, or (3) Reinstatement.

OMB Control Number, if applicable: 2502–0094.

Description of the need for the information and proposed use: This information collection documents for review and audit each Section 235 mortgage serviced by lenders, where HUD financial assistance to qualified low- and moderate-income families is terminated, suspended, and/or reinstated.

Agency form numbers, if applicable: HUD–93114.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 3,900, the number of respondents is 300 generating 7,800 annual responses, the frequency of response is on occasion, and the number of hours per response is 30 minutes.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 28, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–17054 Filed 7–8–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–31]

Notice of Proposed Information Collection: Comment Request; Delinquent Loan Reports

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Delinquent Loan Reports.

OMB Control Number, if applicable: 2502–0060.

Description of the need for the information and proposed use: Mortgagees are required by 24 CFR 203.332 to report once each month all HUD insured single family mortgages that have become 90 or more days delinquent. Mortgagees are also required to give notice to the Secretary of all accounts where the first legal action required to initiate foreclosure has begun. These reports are accomplished by reporting the accounts to HUD via the electronic equivalent (Electronic Data Interchange (EDI) or FHA Connection). The mortgagees are also required to submit a quarterly summary on the 30–60–90 day delinquencies for their respective portfolios.

Agency form numbers, if applicable: HUD–92068A & HUD 92068C.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of annual hours needed to prepare the information collection is 4,200; the number of respondents is 600 generating approximately 9,600 annual responses; the frequency of response is monthly and quarterly; and the estimated time needed to prepare the response varies from 15 minutes to 30 minutes.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 2, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–17055 Filed 7–8–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4737–N–04]

Notice of Proposed Information Collection for Public Comment: Customer Survey of Households Living in Federally Assisted Units

AGENCY: Office of the Assistant Secretary for Public Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The department of soliciting public comments on the subject proposal.

DATES: *Comment Due Date: September* 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8228, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Barbara Haley, 202–708–5537, ext. 5708 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Customer Survey of Households Living in Federally Assisted Units.

OMB Control Number: 2528–0170 (exp. 09/30/02).

Description of the Need for the Information and Proposed Use: HUD developed and tested a cost-effective mail survey instrument for assessing the condition of housing units assisted through HUD programs. The pilot survey, which elicited renters' ratings of their housing, provided high levels of agreement with independent condition ratings by professional inspectors. HUD implements the survey as an ongoing tool to assess customer ratings of the condition of housing assisted through Federal programs, including the Section 8, FHA, and public housing programs. This survey helps HUD focus its monitoring and technical assistance resources on property owners and housing authorities whose performance most need improvement. It also provides policy and program managers with valid measures for tracking assisted housing conditions over time and across programs.

Agency Form Numbers: None.

Members of the Affected Public: Households residing in Federally-assisted housing, including FHA assisted-housing, public housing, or units receiving assistance from the Section 8 Housing Choice Voucher Program.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information will be collected by an periodic mail survey of 267,000 of the 4.7 million households who live in housing units assisted through Federal programs. Based on the first year of data collection, a 62 percent response rate is expected. The survey will take approximately 15 minutes to complete. This means a total of 41,385 hours of response time annually for the information collection.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 28, 2002.

Lawrence L. Thompson,

General Deputy, Assistant Secretary for Policy Development Research.

[FR Doc. 02–17056 Filed 7–08–02; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by August 8, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–057903

Applicant: R.M Bohart Museum of Entomology, University of California, Davis, CA.

The applicant request a permit to export and re-import non-living museum specimens of endangered and threatened species of animals previously accessioned into the applicant's collection for scientific research. This notification covers activities conducted by the applicant for a five-year period.

PRT–056392

Applicant: Jerry Mills, Carrollton, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–058598

Applicant: Lance Burrow, Georgetown, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa

for the purpose of enhancement of the survival of the species.

PRT–037014

Applicant: Duke University, Durham, NC.

The applicant requests a permit to import biological samples and salvaged specimens from Brown hyena (*Parahyaena brunnea*) collected in the wild in Namibia, for scientific research. This notification covers activities conducted by the applicant over a five year period.

Marine Mammals and Endangered Species

The public is invited to comment on the following application for a permit to conduct certain activities with endangered marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*), and the regulations governing marine mammals (50 CFR Part 18) and endangered species (50 CFR part 17). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–038448

Applicant: Iskande L.V. Larkin, University of Florida, Gainesville, FL.

Permit Type: scientific research.

Name and Number of Animals: Florida manatee (*Trichechus manatus*), 6 females.

Summary of Activity to be Authorized: The applicant requests an amendment and extension to her permit to study the reproductive physiology and indicators of stress by taking and using urine, fecal, blood, and vaginal smear samples from 4 captive-held females to measure steroid and protein reproductive hormone concentrations and glucocorticosteroids. No animals from the wild will be used.

Source of Marine Mammals: 4 captive females as identified by the USFWS, Jacksonville, FL, Fish and Wildlife Office.

Period of Activity: Until 12/31/2003.

PRT–051709

Applicant: University of South Florida, College of Marine Science, St. Petersburg, FL.

Permit Type: Take for scientific research.

Name and Number of Animals: Florida manatee (*Trichechus manatus*), 250.

Summary of Activity to be Authorized: The applicant requests a permit to conduct passive hydrophone listening to sounds made by manatees and playback vocalizations using a boat at idle speed in the waters of Florida (Sarasota Bay, Matlacha Canals, Crystal River area).

Source of Marine Mammals: wild animals in the waters of Florida.

Period of Activity: Up to 5 years, if issued.

PRT–837923

Applicant: New College of the University of South Florida, Division of Social Sciences, St. Petersburg, FL.

Permit Type: Take for scientific research.

Name and Number of Animals: Florida manatee (*Trichechus manatus*), 12.

Summary of Activity to be Authorized: The applicant requests an amendment to permit to conduct studies evaluating the ability of manatees to detect chemical compounds (2 animals), and auditory responses (up to 10 animals).

Source of Marine Mammals: Captive held animals.

Period of Activity: Up to 5 years, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–672624

Applicant: U.S.G.S., Biological Resources Division, Santa Cruz, CA.

Permit Type: scientific research.

Name and Number of Animals: Southern sea otter (*Enhydra lutris nereis*); 50.

Summary of Activity to be Authorized: The applicant requests an amendment to the permit to increase the number of animals (from 30 to 50) to be implanted with time-depth recorders.

Source of Marine Mammals: entire range of Southern sea otters in California.

Period of Activity: Up to 2/2/2006.

PRT–046081

Applicant: U.S. Fish and Wildlife Service, Marine Mammal Management, Anchorage, AK.

Permit Type: scientific research.

Name and Number of Animals: polar bear (*Ursus maritimus*); Variable.

Summary of Activity to be Authorized: The applicant requests an amendment to the permit to authorize the paint marking of individual animals for identification purposes to be used in the study of resource utilization.

Source of Marine Mammals: Free ranging.

Period of Activity: Up to five years if authorized.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

PRT–058909

Applicant: K. James Malady, III, Bennington, VT.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

PRT–054887

Applicant: William Jardel, Palmer, AK.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted prior to May 31, 2000, from the M'Clintock Channel polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: June 28, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–17065 Filed 7–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Second Extension of the Comment Period for the Draft Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Second extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a second extension of the comment period for public review of the Draft Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula for an additional 60 days. The first extended comment period closed on May 6, 2002. We are extending the comment period for a second time in response to a specific request from the National Park Service, Golden Gate National Recreation Area (GGNRA), to allow additional time for public review of this draft recovery plan that includes the endangered San Francisco lessingia (*Lessingia germanorum;* lessingia) and the Raven's manzanita (*Arctostaphylos hookeri* ssp. *ravenii;* manzanita). The portion of the plan dealing with the manzanita is a revision of the 1984 Raven's Manzanita Recovery Plan. Additional species of concern that will benefit from recovery actions taken for these plants are also discussed in the draft recovery plan. The draft plan includes recovery criteria and measures for the lessingia and manzanita.

DATES: Comments on the draft recovery plan must be received on or before September 9, 2002.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California (telephone 916–414–6600). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Wayne S. White, Field Supervisor, Ecological Services, at the above Sacramento address.

FOR FURTHER INFORMATION CONTACT: Chris Nagano or Kyle Merriam, Endangered Species Division, at the above address.

SUPPLEMENTARY INFORMATION:

Background

The comment period for the public review of the Draft Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula has previously been extended for 60 days to address public concern that the plan had been difficult to obtain as a result of the government-wide restriction of internet access. This extended comment period closed on May 6, 2002. On April 19, 2002, we received a request from the GGNRA, to extend the comment period for an additional 60 days. GGNRA asserted they required additional time to review the plan due to its complexity, and to the relevance of the plan to activities within the GGNRA. Based on this request, we determined to extend the comment period a second time for public review of the draft recovery plan.

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program. A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for conservation of the species, establish recovery criteria for downlisting or delisting species, and estimate time and cost for implementing the measures needed for recovery.

The Endangered Species Act of 1973, as amended in 1988 (Act) (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments may result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions.

The lessingia and manzanita are restricted to the San Francisco peninsula in San Francisco County, California. The lessingia, an annual herb in the aster family, is restricted to coastal sand deposits. The manzanita, a rare evergreen creeping shrub in the heath family, was historically restricted to a few scattered serpentine outcrops. Habitat loss, adverse alteration of ecological processes, and the invasion of non-native plant species threatens the lessingia. The manzanita has also been threatened by habitat loss, and the primary current threats include the invasion of non-native vegetation and fungal pathogens. The draft recovery plan also makes reference to several other federally listed species which are ecologically associated with the lessingia and manzanita, but which are treated comprehensively in other recovery plans. These species are the beach layia (*Layia carnosa*), the Presidio clarkia (*Clarkia franciscana*), the Marin dwarf-flax (*Hesperolinon congestum*), the Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*), and the bay checkerspot butterfly (*Euphydryas editha bayensis*). In addition, 16 plant species of concern and 17 plant species of local or regional conservation significance are considered in this recovery plan.

The draft recovery plan stresses re-establishing dynamic persistent populations of the lessingia and manzanita within plant communities which have been restored to as ''self-sustaining'' as possible within urban wildland reserves. Specific recovery actions for the lessingia focus on the restoration and management of large dynamic mosaics of coastal dune areas supporting shifting populations within the species' narrow historic range. Recovery of the manzanita may include, but may not be limited to, the strategy of the 1984 Raven's Manzanita Recovery Plan, which emphasized the stabilization of the single remaining genetic individual. The draft plan also recommends re-establishing multiple sexually reproducing populations of manzanita in association with its historically associated species of local serpentine outcrops. The objectives of this recovery plan are to delist the lessingia and to downlist the manzanita through implementation of a variety of recovery measures including (1) protection and restoration of a series of ecological reserves (often with mixed recreational and conservation park land uses); (2) promotion of population increases of the lessingia and manzanita within these sites, or reintroduction of them to restored sites; (3) management of protected sites, especially the extensive eradication or suppression of invasive dominant non-native vegetation; (4) research; and (5) public participation, outreach, and education.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Steve Thompson,

Manager, California/Nevada Operations Office, Region 1, Fish and Wildlife Service.

[FR Doc. 02–17070 Filed 7–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–PH; GP02–0182]

Notice of Public Meeting, Eastern Washington Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council (RAC), will meet as indicated below.

DATES: The Eastern Washington Resource Advisory Council (EWRAC) will meet on July 22, 2002, at the Spokane District Office, Bureau of Land Management, 1103 North Fancher Road, Spokane, Washington, 99212–1275.

FOR FURTHER INFORMATION CONTACT: Kathy Helm, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212, or call (509) 536–1200.

SUPPLEMENTARY INFORMATION: The meeting will start at 8 a.m. and adjourn about 3 p.m. Topics on the meeting agenda include:

Proposed land exchange
Status of Juniper Dunes access
Cooperative Watershed Management
Future RAC meeting dates.

The entire meeting is open to the public. Information to be distributed to Council members is requested in written format 10 days prior to the Council meeting date. Public comment is scheduled for 10 a.m. to 12 noon.

Dated: June 17, 2002.

Karen Slater,

Group Manager, Intergovernmental Affairs, Bureau of Land Management.

[FR Doc. 02–17215 Filed 7–3–02; 4:37 pm]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 22, 2002. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St., NW., NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St., NW., Suite 400, Washington DC 20002; or by fax, 202–343–1836. Written or faxed comments should be submitted by July 24, 2002.

Patrick W. Andrus,

Acting Keeper of the National Register of Historic Places.

ALASKA

Matanuska-Susitna Borough-Census Area

Talkeetna Airstrip, Roughly fron First St. S down D St. to the Susitna R., Talkeetna, 02000814

MICHIGAN

Kent County

Monroe Avenue Water Filtration Plant, 1430 Monroe Ave. NW, Grand Rapids, 02000815

MISSOURI

Buchanan County

Dewey Avenue—West Rosine Historic District, (St. Joseph MPS) Roughly bound by Prospect Ave., Auguste St., Dewey Avenue and West Rosine St., St. Joseph, 02000816

Krug Park Place Historic District, (St. Joseph MPS (AD)), Roughly bounded by St. Joseph Ave., Myrtle St., Clark St., and Magnolia Ave., St. Joseph, 02000817

Patee Town Historic District, (St. Joseph MPS), Roughly bounded by Penn St., S. 11th St., Lafayette St. and S. 15th St., St. Joseph, 02000818

NEVADA

Clark County

LDS Moapa Stake Office Building, 161 W. Virginia St., Overton, 02000819

Lincoln County

1938 Lincoln County Courthouse, 1 Main St., Pioche, 02000820

NEW YORK

Columbia County

St. Peter's Presbyterian Church and Spencertown Cemetery, Cty. Rte. 7, at NY 203, Spencertown, 02000821

Monroe County

United Congregational Church of Irondequoit, 644 Titus Ave., Rochester, 02000822

OREGON

Benton County

College Hill West Historic District, Roughly bounded by NW Johnson, Polk, Arnold and 36th, Corvallis, 02000827

Josephine County

Golden Historic District, 3482 Coyote Creek Rd., Wolf Creek, 02000825

Multnomah County

Balfour—Gutherie Building, 733 SW Oak St., Portland, 02000824

Cobbs, Frank J. and Maude Louise, Estate, 2424 SW Montgomery Dr., Portland, 02000826

TENNESSEE

Davidson County

Pearl High School, 613 17th Ave. N, Nashville, 02000828

TEXAS

Cherokee County

Perkins, James I. and Myrta Blake, House, 303 E. 5th St., Rusk, 02000823

VERMONT

Rutland County

Aldrichville Mill Village Historic Archeological District, Green Mountain National Forest, Wallingford, 02000829

A request for REMOVAL has been made for the following resources:

TENNESSEE

Loudon County

Lenoir Cotton Mill, Depot St. Lenoir City, 75001767

Rutherford County

Brown's Mill, SE of Lascassas on Brown's Mill Rd., Lascassas vicinity, 78002628

Crichlow Grammar School and Cox., E.C., Memorial Gym, 400 N. Maple St. And 105 Olive St., Murfreesboro, 92001685

[FR Doc. 02–17092 Filed 7–8–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the Georgia Department of Natural Resources, Atlanta, GA, and in the Possession of the Antonio J. Waring Archaeological Laboratory, State University of West Georgia, Carrollton, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the Georgia Department of Natural Resources, Atlanta, GA, and in the possession of the Antonio J. Waring Archaeological Laboratory, State University of West Georgia, Carrollton, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Georgia Department of Natural Resources and Antonio J. Waring Archaeological Laboratory, State University of West Georgia professional staff in consultation with representatives of the Cherokee Nation, Oklahoma, Eastern Band of Cherokee Indians of North Carolina, and United Keetoowah Band of Cherokee Indians of Oklahoma.

In 1954, human remains representing a minimum of one individual were removed from New Echota (9GO42), Gordon County, GA, by Georgia Historical Commission staff. In 1972, the Georgia General Assembly dissolved the Commission and assigned its properties, including human remains from New Echota, to the newly created Georgia Department of Natural Resources. No known individual was identified. No associated funerary objects are present.

The excavations were conducted by the Georgia Historical Commission to prepare a reconstruction of the town of New Echota, which had been the capital of the Cherokee Nation from 1825 to 1836. The human remains were recovered from a residence within the town limits. The remains have been identified as Cherokee because of their association with the historically-documented Cherokee capital.

Based on the above-mentioned information, officials of the Georgia Department of Natural Resources have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Georgia Department of Natural Resources also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Cherokee Nation, Oklahoma, Eastern Band of Cherokee Indians of North Carolina, and United Keetoowah Band of Cherokee Indians of Oklahoma.

This notice has been sent to officials of the Cherokee Nation, Oklahoma, Eastern Band of Cherokee Indians of North Carolina, and United Keetoowah Band of Cherokee Indians of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact David Crass, NAGPRA Coordinator, Georgia State Parks and Historic Sites, Suite 1352, 205 Butler Street SE, Atlanta, GA 30334, telephone (404) 656-9344, before August 8, 2002. Repatriation of the human remains to the Cherokee Nation, Oklahoma, Eastern Band of Cherokee Indians of North Carolina, and United Keetoowah Band of Cherokee Indians of Oklahoma may begin after that date if no additional claimants come forward.

Dated: April 9, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17088 Filed 7–8–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of Defense, Army Corps of Engineers, Vicksburg District, Vicksburg, MS

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of completion of an inventory of human remains in the possession of the U.S. Department of Defense, Army Corps of Engineers, Vicksburg District, Vicksburg, MS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by professional staff of the National Museum of Natural History, Smithsonian Institution, Washington, D.C., and Coastal Environments, Inc., Baton Rouge, LA, under contract to the Army Corps of Engineers, Vicksburg District, in consultation with representatives of the Caddo Indian Tribe of Oklahoma.

In 1977, human remains representing a minimum of eight individuals were removed from the Hanna site (16RR4), Red River Parish, LA, by New World Research, Inc., prior to construction of the Red River Waterway project. In 1982, control of the collections that resulted from these excavations during the Red River Waterway project was transferred from the Army Corps of Engineers, New Orleans District to the Vicksburg District. No known individuals were identified. No funerary objects are present.

Based on radiocarbon dates, these burials are dated to A.D. 1000-1300. Archeological and geographic evidence indicate that during this time period, the Hanna site was occupied by the Caddo people, who are represented today by the Caddo Indian Tribe of Oklahoma.

Based on the above-mentioned information, officials of the Army Corps of Engineers' Vicksburg District have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of eight individuals of Native American ancestry. Officials of the Army Corps of Engineers' Vicksburg District also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Caddo Indian Tribe of Oklahoma.

This notice has been sent to officials of the Caddo Indian Tribe of Oklahoma; Chickasaw Nation, Oklahoma; Choctaw Nation of Oklahoma; Coushatta Tribe of Louisiana; Jena Band of Choctaw Indians, Louisiana; Mississippi Band of Choctaw Indians, Mississippi; Quapaw Tribe of Indians, Oklahoma; and Tunica-Biloxi Indian Tribe of Louisiana. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Mr. James Wojtala, Environmental Analysis Section, Environmental and Economic Analysis Branch, Planning, Programs, and Project Management Division, Vicksburg District, U.S. Army Corps of Engineers, 4155 Clay Street, Vicksburg, MS 39183-3435, telephone (601) 631-5428, before August 8, 2002. Repatriation of the human remains to the Caddo Indian Tribe of Oklahoma may begin after that

date if no additional claimants come forward.

Dated: May 1, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17087 Filed 7–8–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM, that meet the definition of ''sacred objects'' and ''objects of cultural patrimony''under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The 11 objects are 2 Katsina mask nosepieces, a Katsina mask horn piece, a mask fragment, a textile belt, a basket bowl (Paho-inpi), a ceramic bowl, a kickstone, and 3 prayer sticks.

In 1967, the two Katsina mask nosepieces (catalogue numbers 67.47.2 and 67.47.3), the Katsina mask horn piece (67.47.4), the kickstone (67.47.5), and a prayer stick (67.47.10) were donated by Florence Ellis to the Maxwell Museum of Anthropology. Museum records indicate that the cultural items were found buried in an abandoned house in Walpi, NM, in 1966 by a Hopi man who subsequently gave or sold them to Mary Ewing, who then sold them to Florence Ellis. During consultation with the Hopi Tribe of Arizona, on behalf of the Society Priests, information was provided that identifies these cultural items as sacred and substantiates the claim that they are needed by traditional religious leaders, and that they are of such central importance to the tribe that they could not have been alienated by an individual.

In 1969, two prayer sticks consisting of a wood branch with feathers and string attached (catalogue numbers 69.66.28 and 69.66.29) were donated by Florence Ellis to the Maxwell Museum of Anthropology. Museum records indicate that these two cultural items were found on Hopi land. During consultation with the Hopi Tribe of Arizona, on behalf of the Society Priests, information was provided that identifies these cultural items as sacred and substantiates the claim that they are needed by traditional religious leaders, and that they are of such central importance to the tribe that they could not have been alienated by an individual.

In 1970, a shallow ceramic bowl with black on orange design (catalogue number 70.39.17) was donated by Florence Ellis to the Maxwell Museum of Anthropology. Museum records indicate that the bowl was taken from Second Mesa, Hopi. During consultation with the Hopi Tribe of Arizona, on behalf of the Society Priests, information was provided that identifies this cultural item as sacred and substantiates the claim that it is needed by traditional religious leaders, and that it is of such central importance to the tribe that it could not have been alienated by an individual.

In 1978, a coiled basket prayer feather bowl (Paho-inpi) (catalogue number 78.43.1) was donated by Helene Warren to the Maxwell Museum of Anthropology. Museum records indicate that the basket was found in a cave on Hopi land. During consultation with the Hopi Tribe of Arizona, on behalf of the Society Priests, information was provided that identifies this cultural item as sacred and substantiates the claim that it is needed by traditional religious leaders, and that it is of such central importance to the tribe that it could not have been alienated by an individual.

In 1955, the upper part of a mask made of painted wool, felt, and hide was donated by B.M. Dutton to the Maxwell Museum of Anthropology. Museum records indicate that the mask part was collected by Mr. R. Plummer in the 1880s from Hopi land. During consultation with the Hopi Tribe of Arizona, on behalf of the Society Priests, information was provided that identifies this cultural item as sacred and substantiates the claim that it is needed by traditional religious leaders, and that it is of such central importance to the tribe that it could not have been alienated by an individual.

In 1979, a painted canvas belt was donated by Mark Hooper to the Maxwell Museum of Anthropology. Museum records indicate that the belt came from Hopi land and that it is used in the snake dance. During consultation with the Hopi Tribe of Arizona, on behalf of the Society Priests, information was provided that identifies this cultural item as sacred and substantiates the claim that it is needed by traditional religious leaders, and that it is of such central importance to the tribe that it could not have been alienated by an individual.

Based on the above-mentioned information, officials of the Maxwell Museum of Anthropology, University of New Mexico have determined that, pursuant to 43 CFR 10.2 (d)(3), these 11 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Maxwell Museum of Anthropology, University of New Mexico also have determined that, pursuant to 43 CFR 10.2 (d)(4), these 11 cultural items have ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual. Lastly, officials of the Maxwell Museum of Anthropology, University of New Mexico have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these sacred objects and objects of cultural patrimony and the Hopi Tribe of Arizona.

This notice has been sent to officials of the Hopi Tribe of Arizona and the Hopi Cultural Preservation Office. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these sacred objects and objects of cultural patrimony should contact Kathryn Klein, Curator of Ethnology, Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM 87131-1201, telephone (505) 277-1936, before August 8, 2002. Repatriation of these sacred objects and objects of cultural patrimony to the Hopi Tribe of Arizona may begin after that date if no additional claimants come forward.

Dated: May 28, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17083 Filed 7–8–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of Franklin Pierce College, Rindge, NH; Manchester Historical Association, Manchester, NH; New Hampshire Division of Historical Resources, Concord, NH; and University of New Hampshire, Durham, NH; and in the Possession of the New Hampshire Division of Historical Resources, Concord, NH

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of Franklin Pierce College, Rindge, NH; Manchester Historical Association, Manchester, NH; New Hampshire Division of Historical Resources, Concord, NH; and University of New Hampshire, Durham, NH (cited below as the four museums); and in the possession of the New Hampshire Division of Historical Resources, Concord, NH.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by professional staff and consultants of the New Hampshire Division of Historical Resources, acting on behalf of the four museums, in consultation with representatives of the Penobscot Tribe of Maine, Wabanaki Tribes of Maine Intertribal Repatriation Committee, the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Abenaki Nation of Missisquoi (a nonfederally recognized Indian group), Abenaki Nation of New Hampshire (a nonfederally recognized group), Cowasuck Band of the Pennacook-Abenaki People (a nonfederally recognized Indian group), First Nation of New Hampshire (a nonfederally recognized Indian group affiliated with the National Federation of the Republic of the Sovereign Abenaki Nation), Abenaki Family Alliance (a nonfederally recognized Indian group), Dawnland Alliance (a nonfederally recognized Indian group), Southern New England Abenaki Council (a nonfederally recognized Indian group), and four intertribal Indian groups, including the New Hampshire Intertribal Native American Council, the Laconia Indian Historical Association, the Boldwing Clan, and the Greater Lowell Indian Cultural Association.

New Hampshire Division of Historical Resources, acting on behalf of the four museums, has determined that the human remains reported in this notice cannot be affiliated with an Indian tribe as defined in NAGPRA, 43 CFR 10.2 (b)(2), and are considered culturally unidentifiable. Until final promulgation of Section 10.11 of NAGPRA regulations, the Native American Graves Protection and Repatriation Review Committee is responsible for recommending to the Secretary of the Interior specific actions for the disposition of culturally unidentifiable human remains, according to NAGPRA, 43 CFR 10.10 (g). In March 1999, the New Hampshire Division of Historical Resources, acting on behalf of the four museums, presented a disposition proposal to the NAGPRA Review Committee to repatriate 17 culturally unidentifiable human remains from 11 locations in New Hampshire to the Abenaki Nation of Missisquoi (a nonfederally recognized Indian group), representing a coalition of Western Abenaki groups, including the Abenaki Nation of New Hampshire (a nonfederally recognized Indian group), Cowasuck Band of the Pennacook-Abenaki People (a nonfederally recognized Indian group), and the First Nation of New Hampshire (a nonfederally recognized Indian group). The proposal was considered by the review committee at its May 1999 meeting.

The review committee recommended disposition of the human remains to the Abenaki Nation of Missisquoi, representing a coalition of Western Abenaki groups, contingent upon the museum's meeting four requirements. On January 11, 2000, the Departmental Consulting Archeologist, writing on behalf of the Secretary of the Interior, to the New Hampshire Division of Historical Resources asked that the museum distribute the inventory of culturally unidentifiable human remains to the Wabanaki Confederacy (representing the Aroostook Band of Micmac Indians of Maine, Houlton Band of Maliseet Indians of Maine, Indian Township Reservation of the Passamaquoddy Tribe, Penobscot Tribe of Maine, and Pleasant Point Reservation of the Passamaquoddy Tribe) and the Wampanoag Confederation (representing the Wampanoag Tribe of Gay Head [Aquinnah], Mashpee Wampanoag Tribe, and Assonet Band of the Wampanoag); document the concurrence of the Wabanaki Confederacy and the Wampanoag Confederation with the proposed disposition; publish a Notice of Inventory Completion in the Federal Register; and consider documentation compiled as part of the inventory process as public information, and available for education and scientific uses. The New Hampshire Division of Historical Resources, on behalf of the four museums, documented in a November 14, 2001, letter to the review committee that three of the requirements had been met, noting that the fourth requirement would be met with the publication of this Notice of Inventory Completion.

In 1967, human remains representing a minimum of one individual were removed from the Hunter site during excavations by Howard Sargent of Franklin Pierce College for the New Hampshire State Highway Department. The Hunter site is in Claremont, NH, on the Sugar River near its confluence with the Connecticut River. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were removed from the Hunter site and were curated at Franklin Pierce College until 1996 when they were transferred to the New Hampshire Division of Historical Resources for curation. On the basis of stratigraphic and archeological context, the human remains have been dated to the Middle or Late Woodland period (A.D. 1-1500). Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1968, human remains representing a minimum of two individuals were removed from the Smyth site during excavations by Howard Sargent of Franklin Pierce College for the New Hampshire State Highway Department.

The Smyth site is in Concord, NH, on a terrace above the Merrimack River. No known individuals were identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were removed from the Smyth site during a salvage excavation and were curated at Franklin Pierce College until 1997 when they were transferred to the New Hampshire Division of Historical Resources. On the basis of stratigraphic and archeological context, the human remains have been dated to the Woodland period (1000 B.C.-A.D. 1500). Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1971, human remains representing a minimum of one individual were donated by Clyde Berry to the Manchester Historical Association. No known individual was identified. The six associated funerary objects are one small bag of ocher, one small bag of charcoal, one small bag of lithic flakes, one small bag of animal bone, one small bag of turtle shell, and one small bag of fragmentary bone tools. The human remains and associated funerary objects were transferred in 1999 to the New Hampshire Division of Historical Resources for curation.

Museum documentation indicates that these human remains (Berry Collection number 4256) are of a cremated individual from a grave with ocher-stained soil that was exposed by WPA workers in the 1930s during road construction on a terrace above the Merrimack River in Manchester, NH. The radiocarbon date from associated charcoal is 8490 +/- 60 B.P. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In the 1950s, human remains representing a minimum of one individual were donated by Clyde Berry as part of the Berry Collection to the Manchester Historical Association. No known individual was identified. The four associated funerary objects are three small animal bones and a bone awl. The human remains and associated funerary objects were transferred in 1999 to the New Hampshire Division of Historical Resources for curation.

Museum documentation indicates that these human remains (Berry Collection number 3745) were recovered at Amoskeag on the west bank of the Merrimack River in Manchester, NH, by a workman digging a utility trench at an unknown date. Based on the condition of the bone, the burial is considered to be from the Woodland period (2000 B.C.-A.D.1500). Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1971, human remains representing a minimum of one individual were donated by Clyde Berry to the Manchester Historical Association. No known individual was identified. No associated funerary objects are present. These human remains were transferred in 1999 to the New Hampshire Division of Historical Resources for curation.

Museum documentation indicates that these human remains (Berry Collection number 3566) were found by Francis K. Berry in 1938 and removed by James W. House in 1939 from a locale known as ≥the Narrows≥ on the Merrimack River in Bedford, NH. The age of the burial is undetermined but has been determined to be Native American on the basis of its recovery in context with other Native American archeological material of Archaic and Woodland age. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1984, human remains representing a minimum of one individual were donated to the New Hampshire Division of Historical Resources by the Museum at Fort No. 4, Charlestown, NH. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were found by a local collector and donated to the Museum at Fort No. 4. There are no records of either the discovery or the donation, but the identification card made at the time of the donation labeled the human remains as ≥Late Woodland period≥ (A.D. 1000-1500). Information obtained recently indicates the human remains were collected from an eroding bank of the Connecticut River just upstream from the Museum at Fort No. 4, Charlestown, NH. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1982, human remains representing a minimum of one individual were donated to the New Hampshire Division of Historical Resources by the Police Department of Concord, NH. The human remains were recovered in 1974 during construction of a parking lot in Concord, NH, and were investigated as Concord Police Case 1439C. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that the human remains belong to the Late Woodland/Historic period (circa A.D. 1000-present). The burial has been determined to be Native American on the basis of its recovery in context with other Native American archeological materials. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the

Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1994, human remains representing a minimum of one individual were removed from a site near the New Hampshire Technical Institute in Concord, NH, by Dr. Thomas Hemmings of the New Hampshire Division of Public Works and were placed with the New Hampshire Division of Historical Resources the same year. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were removed from flood deposits of the Historic period (post-A.D. 1500) by Dr. Hemmings during pre-construction research for the New Hampshire Division of Public Works on the Merrimack River flood plain at the New Hampshire Technical Institute in Concord, NH. The burial has been determined to be Native American on the basis of its recovery in context with other Native American archeological materials. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1984, human remains representing a minimum of one individual were removed from the Beaver Brook site during excavations by Dr. David Starbuck and Dennis Howe, and were placed with the New Hampshire Division of Historical Resources in 1985. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were removed by Dr. David Starbuck and Dennis Howe, independent researchers, during an archeological study of the Beaver Brook site on the flood plain of the Merrimack River in Concord, NH. The site was not identified as a cremation burial at the time that the bones were removed. Later, staff of the a Museum of Archeology and Ethnology, Harvard University, Cambridge, MA, identified the bone as human while conducting an osteological analysis for the excavators. At this time, the bone and the stone pavement and stone pyramid, which were associated with the bones, were identified as features of a cremation burial. The radiocarbon date from associated charcoal is 5155 +/- 190 B.P. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1975, human remains representing a minimum of four individuals were removed from the Rocks Road site during excavations by Dr. Charles Bolian of the University of New Hampshire. The human remains were transferred to the New Hampshire Division of Historical Resources for curation in 1999. No known individuals were identified. No associated funerary objects are present.

Museum documentation indicates that these human remains were removed from the Rocks Road site (also known as the Seabrook Station site) during a pre-construction archeological project for the Seabrook Station nuclear power plant in Seabrook, NH, on the Atlantic coast. A radiocarbon date from associated charcoal is 650 B.P. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Eastern Abenaki and Wampanoag appear also to have cultural ties to coastal New Hampshire in the Historic period. The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1975, human remains representing a minimum of three individuals were removed from the Seabrook Marsh site in Seabrook, NH, by Dr. Charles Bolian and Brian Robinson of the University of New Hampshire. The human remains were transferred in 1999 to the New Hampshire Division of Historical Resources for curation. No known individuals were identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were removed from the Seabrook Marsh site in Seabrook, NH, during an archeological survey of New Hampshire's Atlantic seacoast. The site is dated to the Late Archaic period (4000-2000 B.C.) based on radiocarbon dating. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Eastern Abenaki and Wampanoag appear also to have cultural ties to coastal New Hampshire in the Historic period. The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

Based on the above-mentioned information, officials of the New Hampshire Division of Historical Resources, acting on behalf of the four museums, have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 17 individuals of Native American ancestry. Officials of the New Hampshire Division of Historical Resources, acting on behalf of the four museums, also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 10 associated funerary objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the New Hampshire Division of Historical Resources, acting on behalf of the four museums, have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Abenaki Nation of Missisquoi (a nonfederally recognized Indian group), representing a coalition of Western Abenaki groups, including the Abenaki Nation of New Hampshire (a nonfederally recognized Indian group), Cowasuck Band of the Pennacook-Abenaki People (a nonfederally recognized Indian group), and the First Nation of New Hampshire (a nonfederally recognized Indian group).

This notice has been sent to the Penobscot Tribe of Maine, Wabanaki Confederacy, the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Abenaki Nation of Missisquoi (a nonfederally recognized Indian group), Abenaki Nation of New Hampshire (a nonfederally recognized Indian group), Cowasuck Band of the Pennacook-Abenaki People (a nonfederally recognized Indian group), and First Nation of New Hampshire (a nonfederally recognized Indian group). Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains, should contact Richard Boisvert, Deputy State Archeologist, New Hampshire Division of Historical Resources, P.O. Box 2043, Concord, NH 03302-2043, telephone (603) 271-6628, before August 8, 2002. Repatriation of the human remains to the Abenaki Nation of Missisquoi, representing a coalition of Western Abenaki groups, may begin after that date if no additional claimants come forward.

Dated: April 10, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17090 Filed 7–8–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of the Interior, Bureau of Reclamation, Central Arizona Project Repository, Tucson, AZ, and in the Control of the U.S. Department of the Interior, Bureau of Reclamation, Phoenix Area Office, Phoenix, AZ; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, Bureau of Reclamation, Central Arizona Project Repository, Tucson, AZ, and in the control of the U.S. Department of the Interior, Bureau of Reclamation, Phoenix Area Office, Phoenix, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

The National Park Service published a Notice of Inventory Completion in the **Federal Register** of February 27, 2002, concerning human remains and associated funerary objects recovered from sites in Arizona. In a review of Bureau of Reclamation, Central Arizona Project Repository collections, the presence of 3 additional individuals and 63 additional associated funerary objects was revealed. This notice corrects the number of human remains and associated funerary objects reported in the February 27, 2002, notice.

In the **Federal Register** of February 27, 2002, in FR Doc. 02-4580, page 8996-9002, paragraphs 40, 42, 62, 64, 66, 68, 70, and 86 are corrected by substituting the following paragraphs:

(Paragraph 40) In 1985, during legally authorized data recovery efforts undertaken by the Museum of Northern Arizona for the Bureau of Reclamation, human remains representing 55 individuals were recovered from the Brady Wash Site, NA18003(MNA), at the base of the Picacho Mountains in Pinal County, AZ. No known individuals were identified. The 294 associated funerary objects are 29 whole and reconstructable vessels (19 bowls, 6 jars, and 4 scoops); 1 partial perforated sherd disk; 1 figurine fragment; 63 bags of sherds; 1 schist anvil; 3 stone beads; 1 mano fragment; 1 stone lip/nose plug; 2 projectile points; 33 bags of chipped stone; 7 bags of worked shell (including 50 shell disk beads, 78 whole *Olivella* shell beads, 1 *Glycymeris* shell ring, and 1 worked shell fragment); 3 bags of unworked shell fragments; 4 bags of worked faunal bone (including 3 worked fragments, 2 broken tools, and 1 awl tip); 29 bags of unworked faunal bone; and 116 flotation, pollen, macrobotanical, and raw material samples.

(Paragraph 42) In 1985, during legally authorized data recovery efforts undertaken by the Museum of Northern Arizona for the Bureau of Reclamation, human remains representing eight individuals were recovered from the Picacho Pass site, NA18030(MNA), at the base of the Picacho Mountains in Pinal County, AZ. No known individuals were identified. The 33 associated funerary objects are 5 ceramic vessels (3 bowls, 1 jar, and 1 cup); 9 bags of sherds; 1 stone disk bead; 3 projectile points; 5 bags of chipped stone; and 10 flotation and pollen samples.

(Paragraph 62) Between 1982 and 1983, during a legally authorized survey undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing a minimum of one individual were recovered from the surface of site AZ AA:7:15(ASM), at the base of the Picacho Mountains in Pima County, AZ. No known individual was identified. The 18 associated funerary objects are 8 bags of sherds, 3 projectile points, 4 bags of chipped stone, and 3 bags of unworked faunal bone.

(Paragraph 64) In 1988, during legally authorized data recovery efforts by Northland Research for the Bureau of Reclamation, human remains representing a minimum of 61 individuals were recovered from the Los Rectangulos site, AZ AA:6:3(ASM), in the lower Santa Cruz Valley in Pinal County, AZ. No known individuals were identified. The 369 associated funerary objects are 56 complete or reconstructable ceramic vessels (1 scoop, 1 mug, 20 jars, 32 bowls, and 2 indeterminate); 2 sherd pendants; 2 worked sherds; 1 worked sherd spindle whorl; 77 bags of sherds; 1 polishing stone; 1 stone bead; 2 ground stone artifacts; 9 ground stone fragments; 10 projectile points; 59 bags of chipped stone; 25 bags of worked shell (including 16 shell beads, 1 shell tinkler, 2 shell pendants, 5 shell bracelet fragments, and 3 whole worked *Glycymeris* shells); 9 bags of unworked shell fragments; 2 bags of worked faunal bone (including 2 bone awls); 13 bags of unworked faunal bone fragments; and 100 flotation, pollen, soil, macrobotanical and radiocarbon samples.

(Paragraph 66) In 1988, during legally authorized data recovery efforts by Northland Research for the Bureau of Reclamation human remains representing a minimum of 13 individuals were recovered from the Gecko site, AZ AA:6:25(ASM), in the lower Santa Cruz Valley in Pinal County, AZ. No known individuals were identified. The 103 associated funerary objects are 9 complete or reconstructable ceramic vessels (7 bowls and 2 jars); 15 bags of sherds; 1 turquoise pendant; 1 stone bead; 8 bags of chipped stone; 4 bags of worked shell (including 2 complete shell bracelets, 2 complete shell pendants/earrings, and 2 shell beads); 1 bag of unworked shell fragments; 2 bags of worked faunal bone (including 3 bone awls); 1 bag of unworked faunal fragments; and 61 flotation, pollen, radiocarbon, and macrobotanical samples.

(Paragraph 68) In 1988, during legally authorized data recovery efforts by Northland Research for the Bureau of Reclamation, human remains representing a minimum of five individuals were recovered from the Hotts Hawk site, AZ AA:6:31(ASM), in the lower Santa Cruz Valley in Pinal County, AZ. No known individuals were identified. The 35 associated funerary objects are 8 complete and reconstructable ceramic vessels (6 bowls and 2 jars); 1 ceramic spindle whorl/bead; 1 unfired clay disk; 7 bags of sherds; 3 bags of chipped stone; 1 bag of worked shell (including 2 shell pendants/earrings); and 14 flotation and pollen samples.

(Paragraph 70) In 1984, during legally authorized data recovery efforts undertaken by Northland Research for the Bureau of Reclamation, human remains representing one individual were recovered from the Crip site, AZ AA:2:69(ASM), in the lower Santa Cruz Valley in Pinal County, AZ. No known individual was identified. The 49 associated funerary objects are 14 bags of sherds; 2 mano fragments; 1 polishing stone fragment; 7 bags of chipped stone; 2 bags of worked shell (including 1 bracelet fragment and 1 fragment of worked shell); 2 bags of unworked shell; 4 bags of unworked faunal bone fragments; and 17 flotation, radiocarbon, and macrobotanical samples.

(Paragraph 86) Based on the above-mentioned information, officials of the Bureau of Reclamation have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 483 individuals of Native American ancestry. Officials of the Bureau of Reclamation also have determined that the 3,269 items listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Reclamation have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Ak-Chin Indian Community of the Ak-Chin Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to the Ak-Chin Indian Community of the Ak-Chin Indian Reservation, Arizona; Chemehuevi Indian Tribe of the Chemehuevi Indian Reservation, California; Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona; Fort Mohave Indian Tribe of Arizona, California & Nevada; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Pascua Yaqui Tribe of Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact in writing Jon Czaplicki or Bruce Ellis, Bureau of Reclamation, Phoenix Area Office, P.O. Box 81169, Phoenix, AZ 85069-1169, telephone (602) 216-3862, before August 8, 2002. Repatriation of the human remains and associated funerary objects to the Ak-Chin Indian Community of the Ak-Chin Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico may begin after that date if no additional claimants come forward.

Dated: May 22, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02-17086 Filed 7–8–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

.This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

An assessment of the human remains, and catalogue records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Confederated Tribes of the Grande Ronde Community of Oregon.

At an unknown date before 1901, human remains representing at least one individual were recovered from a grave in an unknown location on the south bank near the mouth of the Chetco River, Chetco, Curry County, OR, by P.E. Goddard. Around 1901, these human remains were donated to the Phoebe A. Hearst Museum of Anthropology by Mrs. P.A. Hearst. No known individual was identified. No associated funerary objects are present.

It is probable that this unknown location is Cidxu, an historic Chetco village, where Mr. Goddard is known to have excavated. The Athabascan inhabitants of Cidxu were removed to the reservation of the Confederated Tribes of the Grande Ronde Community of Oregon , where descendants of this community continue to reside.

Based on the above-mentioned information, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Confederated

Tribes of the Grande Ronde Community of Oregon.

This notice has been sent to officials of the Confederated Tribes of the Grande Ronde Community of Oregon. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley CA 94720, telephone (510) 642-6096, before August 8, 2002. Repatriation of the human remains to the Confederated Tribes of the Grande Ronde Community of Oregon may begin after that date if no additional claimants come forward.

Dated: May 24, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17084 Filed 7–8–02; 8:45 am]

BILLING CODE 4310–70–S

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–417–421 and 731–TA–953–963 (Preliminary), (Remand as to Egypt, South Africa and Venezuela)]

Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Mexico, Moldova, South Africa, Ukraine and Venezuela, Trinidad and Tobago, Turkey, Taiwan; Notice and Scheduling of Remand Proceedings

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The U. S. International Trade Commission (the Commission) hereby gives notice of the court-ordered remand of its preliminary antidumping investigations Nos. 731–TA–955, 960 and 963 (Preliminary).

EFFECTIVE DATE: July 3, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Messer, Office of Investigations, telephone 202–205–3193 or Karen V. Driscoll, Office of General Counsel, telephone 202–205–3092, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov).*

SUPPLEMENTARY INFORMATION:

Reopening Record

In October 2001, the Commission made negligibility determinations in antidumping investigations regarding wire rod imports from Egypt, South Africa and Venezuela, and terminated those investigations pursuant to statute. The Commission's determinations were appealed to the U.S. Court of International Trade (CIT). On June 20, 2002, the CIT issued an opinion requiring the Commission to reconsider its terminations given the modified scope of investigations issued by the Department of Commerce (''Commerce'') on April 10, 2002 (67 FR 17,384). The Commission was given until August 2, 2002, or 43 days, in which to comply with the Court's remand order and issue remand determinations.

In order to assist it in making its determinations on remand, the Commission is reopening the record on remand in these investigations to include in the record the modified scope issued by Commerce in April, 2002, and to obtain import data corresponding to that modified scope of investigations regarding subject wire rod imports from all sources. The record in these proceedings will encompass the material from the record of the original preliminary investigations, information and import data submitted to and gathered by Commission staff during the remand proceedings, and Commerce's modified April 10, 2002 scope (67 FR 17,384).

Participation in the Proceedings

Due to the strict time constraints in this remand proceeding, and the limited nature of the remand, only those parties to the original administrative proceedings may participate in the Commission's remand proceedings. No additional filings with the Commission will be necessary for these parties to participate in these remand proceedings.

Nature of the Remand Proceedings

On July 12, 2002, the Commission will make available to parties who may participate in the remand proceedings, information that has been gathered by or submitted to the Commission as part of these remand proceedings. Parties that are participating in the remand proceedings may file comments on or before July 16, 2002 on whether any new information received affects the Commission's negligibility determinations in these investigations. These comments should not exceed ten double-spaced typewritten pages.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Each document filed by a party participating in the remand investigation must be served on all other parties who may participate in the remand investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service. Parties are also advised to consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigation will be released to the above-referenced parties, as appropriate, under the administrative protective order (''APO'') in effect in the original investigation. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in this remand investigation.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

Issued: July 3, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–17153 Filed 7–8–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–943 (Final)]

Circular Welded Non-Alloy Steel Pipe From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from China of circular welded non-alloy steel pipe, provided for in subheadings 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective May 24, 2001, following receipt of a petition filed with the Commission and Commerce on behalf of Allied Tube & Conduit Corp., Harvey, IL; IPSCO Tubulars, Inc., Camanche, IA; LTV Copperweld, Youngstown, OH; Northwest Pipe Co., Portland, OR; Western Tube & Conduit Corp., Long Beach, CA; Century Tube Corp., Pine Bluff, AR; Laclede Steel Co., St. Louis, MO; Maverick Tube Corp., Chesterfield, MO; Sharon Tube Co., Sharon, PA; Wheatland Tube Co., Wheatland, PA; and the United Steelworkers of America, AFL–CIO. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of circular welded non-alloy steel pipe from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 29, 2002 (67 FR 4283). The hearing was held in Washington, DC, on May 17, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 2, 2002. The views of the Commission are contained in USITC Publication 3523 (July 2002), entitled Circular Welded Non-Alloy Steel Pipe from China: Investigation No. 731–TA–943 (Final).

Issued: July 3, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–17124 Filed 7–8–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–948 (Final)]

Individually Quick Frozen Red Raspberries From Chile

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Chile of individually quick frozen (''IQF'') red raspberries,[3] provided for in subheading 0811.20.20 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective May 31, 2001, following receipt of a petition filed with the Commission and Commerce by the IQF Red Raspberry Fair Trade Committee, Washington, DC. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of IQF red raspberries from Chile were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 1, 2002 (67 FR 4994). The hearing was held in Washington, DC, on May 23, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 2, 2002. The views of the Commission are contained in USITC Publication 3524 (June 2002), entitled Individually Quick Frozen Red Raspberries from Chile: Investigation No. 731–TA–948 (Final).

Issued: July 2, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–17059 Filed 7–8–02; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Jennifer A. Hillman dissenting.

[3] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as IQF red raspberries, whole or broken, from Chile, with or without the addition of sugar or syrup, regardless of variety, grade, size or horticulture method (e.g., organic or not), the size of the container in which packed, or the method of packing. The scope of the petition excludes fresh red raspberries and block frozen red raspberries (i.e., puree, straight pack, juice stock, and juice concentrate).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–442]

U.S.-Chile FTA: Probable Economic Effects on the Economy as a Whole of Eliminating Tariffs on Certain Agricultural Products

AGENCY: International Trade Commission.

ACTION: Institution of investigation and invitation for written submissions.

SUMMARY: Following receipt of a request on June 19, 2002, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–442, U.S.-Chile FTA: Probable Economic Effects on the Economy as a Whole of Eliminating Tariffs on Certain Agricultural Products, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

Background: As requested by USTR, the Commission will assess the probable economic effects on the economy as a whole of eliminating tariffs on certain agricultural products from Chile. A list of the products covered in this investigation may be obtained electronically form EDIS–ON–LINE, or from the Office of the Secretary at 202–205–2000. The Commission plans to submit its report by September 19, 2002. USTR indicated that portions of the report will be classified as ''Confidential.''

EFFECTIVE DATE: July 2, 2002.

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Jonathan Coleman, Project Leader (202–205–3465 or *JColeman@usitc.gov*) or William Lipovsky, Chief Animal and Forest Products Branch (202–205–3330 or *Lipovsky@usitc.gov*), Office of Industries, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091 or *wgearhart@usitc.gov*). Hearing-impaired

individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public/.*

Written Submissions: The Commission does not plan to hold a public hearing in connection with this investigation. However, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. The Commission may include such confidential business information in the report it sends to USTR. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on July 19, 2002. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact of the Office of the Secretary at 202–205–2000.

List of Subjects

Chile, tariffs, and trade.

Issued: July 2, 2002.
By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–17060 Filed 7–8–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–443]

U.S.-Singapore FTA: Probable Economic Effects on the Economy as a Whole of Eliminating Tariffs on Certain Agricultural Products

AGENCY: International Trade Commission.

ACTION: Institution of investigation and invitation for written submissions.

EFFECTIVE DATE: July 2, 2002.

SUMMARY: Following receipt of a request on June 19, 2002, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–443, U.S.-Singapore FTA: Probable Economic Effects on the Economy as a Whole of Eliminating Tariffs on Certain Agricultural Products, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

Background: As requested by USTR, the Commission will assess the probable economic effects on the economy as a whole of eliminating tariffs on certain agricultural products from Singapore. A list of the products covered in this investigation may be obtained electronically from EDIS–ON–LINE, or from the Office of the Secretary at 202–205–2000. The Commission plans to submit its report by September 19, 2002. USTR indicated that portions of the report will be classified as ''Confidential.''

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Jonathan Coleman, Project Leader (202–205–3465 or *JColeman@usitc.gov*) or William Lipovsky, Chief Animal and Forest Products Branch (202–205–3330 or *Lipovsky@usitc.gov*), Office of Industries, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091 or *wgearhart@usitc.gov*). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public/.*

Written Submissions: The Commission does not plan to hold a public hearing in connection with this investigation. However, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. The Commission may include such confidential business information in the report it sends to USTR. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on July 19, 2002. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

List of Subjects

Singapore, tariffs, and trade.

Issued: July 2, 2002.
By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–17058 Filed 7–8–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment

assistance for workers (TA–W) issued during the period of June 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,953; R.R. Donnelley and Sons Co., Premedia Div., Lynchburg, VA
TA–W–40,643; Robbins Hardwood Flooring, Inc., Witt Plant, Warren, AR
TA–W–41,119; A.D.A. Machinery Corp., Warren, OH
TA–W–41,125; Dillon Yarn Corp., Dillon, SC
TA–W–41,261; Dayton Pattern, Inc., Dayton, OH
TA–W–41,319; Groupe Carbone Lorraine, Astro Cosmos Metallurgical, Inc., Wooster, OH
TA–W–40,723; F.C. Meyer Packaging Co., Franklin Carton Div., A Div. Of Mafcote Industries, Inc., St. Louis, MO
TA–W–40,755; Crompton Corp., Formerly Known as Uniforyal Chemical Div., Naugatuck, CT
TA–W–40,944; Zeeland Chemical Div., of Cambrex Corp., Zeeland, MI
TA–W–40,290 & A; Cascade Tissue Group, Formerly Plainwell Tissue, Pittston Township, PA and Ranson, PA
TA–W–41,062; Palmetto Loom Reed Co., Greenville, SC
TA–W–41,107; Trinity Industries, Plant 40, Girard, OH
TA–W–41,275; F.H. Stoltze Land and Lumber Co., Stoltze Aspen Mills Div., Siguird, UT

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–41,198; Starlo Fashions, North Bergen, NJ

The investigation revealed that criteria (1) has not been met. A Significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–41,177; Dana Corp., Victor Reinz Div., Robinson, IL

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,146; Scottsboro Aluminum LLC, Scottsboro, AL
TA–W–40,668; Ram Fabricating Corp., Athens, TN
TA–W–39,839; BMP America, Inc., A Subsidiary of Andrew Industries, Ltd, Portland, OR
TA–W–41,012; Sensormatic Electronics Corp., Boca Raton, FL
TA–W–41,035; Imerys Pigments and Additives Group, Dry Branch, GA
TA–W–40,707; AG Simpson Automotive Systems, Sterling Heights, MI

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–41,546; Classic Knitting Mills, Inc., Greensboro, NC: May 6, 2001.
TA–W–41,326; U.S. Electrical Motors, Philadelphia, MS: March 11, 2002.
TA–W–40,544; Tyco Printed Circuit Group, A Div. Of Tyco International Ltd, Dallas, OR: December 17, 2000.
TA–W–41,337 & A; Quantum Corp., DLT & Storage Systems Group, Colorado Springs, CO and Shrewsbury, MA: May 19, 2002.
TA–W–40,352; Barker Microfarads, Inc., Hillsville, VA: October 26, 2000.
TA–W–40,079 & A; Zilog, Inc., Probe Manufacturing, Nampa, ID and Mod III Manufacturing, Nampa, ID: August 31, 2001.
TA–W–41,355; Fourply, Inc., Plywood Div., Grants Pass, OR: March 8, 2001.
TA–W–40,327; Meadwestvaco, Rumford, ME: March 22, 2001.
TA–W–41,156; London Harness and Cable, Trenton, NJ: January 13, 2001.
TA–W–41,114; Tyco Electronics, Stockton, CA: March 6, 2001.
TA–W–41,093; Greenwood Mills, Durst Plant, Greenwood, SC: December 18, 2000.
TA–W–41,067; SCP Global Technologies, Inc., Boise, ID: February 1, 2001.
TA–W–41,058; Elsevier Science Formerly Harcourt Health Sciences, Typesetting Department, Philadelphia, PA: February 1, 2001.
TA–W–41,038; Murray, Inc., McKenzie, TN: February 7, 2001.
TA–W–41,036; Wiggins Lumber Co., Wiggins, MS: November 16, 2000.
TA–W–41,025; Bombardier Transportation (Holdings), USA, Inc., Pittsburgh, PA: February 6, 2001.
TA–W–40,977; La La Imports, LP, El Paso, TX: January 4, 2001.
TA–W–40,925; BH Electronics, Inc., Marshall, MN: January 29, 2001.
TA–W–40,918; Fellows Corp., A Div. Of Goldman Industries Group, North Springfield, VT: January 21, 2001.
TA–W–40,871; TRW Aeronautical Systems, Lucas Aerospace, Aurora, OH: December 7, 2000.
TA–W–40,764; Fit Rite Headwear, Inc., Wilkes Barre, PA: October 30, 2000.
TA–W–40,578; Graphic Arts, Inc., Philadelphia, PA: November 27, 2000.
TA–W–40,171; Valmont Industries and Herman Schwabe, Inc., Hazelton, PA: September 18, 2000.
TA–W–40,711; Carolina Glove Co., Wilkes Plant, Conover, NC: January 9, 2001.
TA–W–40,675; Titan Plastics Group, Formerly Plastic Engineered Components, Formerly Golden Triangle Plastic, El Paso Division, El Paso TX: December 17, 2000.
TA–W–40,615; Emerson Electronic Connector and Components Co., Waseca, MN: November 29, 2000.
TA–W–39,904; Tiffany Lincoln Textiles, New York, NY: August 13, 2000.
TA–W–39,677 & A; Concord Fabrics, Inc., Knitted Fabrics Div., Milledgeville, GA and Concord House Div., New York, NY: July 6, 2000.
TA–W–41,117; Canto Tool Corp., Meadville, PA: February 8, 2001.
TA–W–41,047; C.G. Bretting Manufacturing Corp., Inc., Ashland, WI: February 14, 2001.
TA–W–40,987; Globe Metallurgical, Inc., Niagara Falls, NY: February 26, 2001.
TA–W–40,969; Paramount Headwear, Inc., Bourbon, MO: October 9, 2001.
TA–W–40,877; ESP/Jocassee Trading Co., Easley, SC: September 24, 2000.
TA–W–40,826; Lee Mah Electronics, Inc., San Francisco, CA: November 30, 2000.
TA–W–41,492; Keystone Tool and Machine, Inc., Carlisle, PA: April 16, 2001.
TA–W–41,304; Alcatel, Optical Fiber Div., Claremont, NC: March 6, 2001.
TA–W–41,317; Metso Minerals Industries, Inc., Formerly Svedala Industries, Appleton, WI: March 4, 2001.
TA–W–41,221; Walls Industries, Inc., Cleburne, TX: March 11, 2001.

TA–W–41,253; Metso Minerals Industries, Inc., Formerly Svedala Industries, Birmingham, AL: February 12, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increased imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–06197; PW Pipe, Hillsboro, OR

NAFTA–TAA–06145; Execumold, Inc., (Currently located at Fairview, Pennsylvania), Erie, PA

NAFTA–TAA–06137; Keystone Tool and Machine, Inc., Carlisle, PA

NAFTA–TAA–06093; RHO Industries, Inc., Buffalo, NY

NAFTA–TAA–06084; Pohlman Foundry Co., Inc., Buffalo, NY

NAFTA–TAA–06012; Dayton Pattern, Inc., Dayton, OH

NAFTA–TAA–05935; Metso Minerals Industries, Inc., Formerly Svedala Industries, Birmingham, AL

NAFTA–TAA–05889; Trailmobile Trailer, LLC, Charleston, IL

NAFTA–TAA–05875; C.G. Bretting Manufacturing Corp., Inc., Ashland, WI

NAFTA–TAA–05837; Canto Tool Corp., Meadville, PA

NAFTA–TAA–05823; Lee Mah Electronics, Inc., San Francisco, CA

NAFTA–TAA–05821; BH Electronics, Marshall, MN

NAFTA–TAA–05797; Englehard Corp., McIntyre, GA

NAFTA–TAA–05771; Dillon Yarn Corp., Dillon, SC

NAFTA–TAA–05743; Zeeland Chemical, Div. of Cambrex Corp., Zeeland, MI

NAFTA–TAA–05690; Titan Plastics Group, Formerly Plastic Engineered Components, Formerly Golden Triangle Plastic, El Paso Div., El Paso, TX

NAFTA–TAA–5680; F.C. Meyer Packaging Co., Franklin Carton Div., a Div. of Mafcote Industries, Inc., St. Louis, MO

NAFTA–TAA–05413 & A; Cascade Tissue Group, Formerly Plainwell Tissue, Pittston Township, PA and Ranson, PA

NAFTA–TAA–05108; Ryan Engineering and Design Co., Inc., Pellston, MI

NAFTA–TAA–5277 & A; Zilog, Inc., Probe Manufacturing, Nampa, ID and Mod III Manufacturing, Nampa, ID

NAFTA–TAA–05528; Robbins Hardwood Flooring, Inc., Witt Plant, Warren, AR

NAFTA–TAA–05777; R.R. Donnelley and Sons Co., Premedia Div., Lynchburg, VA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

NAFTA–TAA–05816; Mitel Networks Corp., Network Access Solutions, Ogdensburg, NY

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05780; AG Simpson Automotive Systems, Sterling Heights, MI: January 23, 2001

NAFTA–TAA–05857; Tyco Printed Circuit Group, A Div. Of Tyco International Ltd, Dallas, OR: January 31, 2001.

NAFTA–TAA–06082; Pleatz LLC, New York, NY: August 10, 2001.

NAFTA–TAA–05614; Emerson Electronic Connector and Components Co., Waseca, MN: November 29, 2000.

NAFTA–TAA–05679; Biokyowa, Inc., A Subsidiary of Kyowa Hakko Kogyo, Ltd, Cape Girardeau, MO: December 12, 2000.

NAFTA–TAA–05774; Xpectra, Inc., Santa Cruz Div., Santa Cruz, CA: January 2, 2001.

NAFTA–TAA–5936; Metso Minerals Industries, Inc., Formerly Svedala Industries, Appleton, WI: March 4, 2001.

NAFTA–TAA–05973; Xerox Corp., Electronics Delivery Unit, El Segundo, CA: March 11, 2001.

NAFTA–TAA–06040; Warnaco, Calvin Klein Jeans Div., Nesquehoning, PA: March 28, 2001.

NAFTA–TAA–06065; American Tramways, Inc., A Div. Of Doppelmayr CTEC, Inc., Watertown, NY: October 1, 2000.

NAFTA–TAA–06086; Scapa Tapes North America, A Div. Of Scapa Group PLC, Watertown, NY: July 30, 2000.

NAFTA–TAA–06116; Signal Transformer Co., Inc., Inwood, NY: November 9, 2000.

NAFTA–TAA–06146; Springs Window Fashions, LP, Montgomery, PA: April 12, 2001.

NAFTA–TAA–06186; Emerson Process Management, Rosemount Analytical, Inc., Anaheim, CA: May 10, 2001.

NAFTA–TAA–06192; LNP Engineering Plastics, Inc., Santa Ana, CA: May 7, 2001.

NAFTA–TAA–06229; Insilco Technologies, ITG Global, Hiddenite, NC: May 13, 2001.

I hereby certify that the aforementioned determinations were issued during the month of June, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 2, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17146 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,438]

Alliance Machine Co., Division of Reunion Industries, Inc., Alliance, Ohio; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 29, 2002 in response to a petition filed on the same date on behalf of workers at Alliance Machine Company, Division of Reunion Industries, Inc., Alliance, Ohio.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 28th day of June, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–17139 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,255]

American Greetings Corp., Corbin, KY Notice of Negative Determination Regarding Application for Reconsideration

By application received on June 6, 2002 and June 7, 2002, a worker and the Teamsters, Local 89, respectively, requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on May 13, 2002, and published in the **Federal Register** on June 4, 2002 (67 FR 38521).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of American Greetings Corporation, Corbin, Kentucky was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. Increased imports did contribute importantly to worker separations. The denial was based on Corbin, Kentucky production of printed greeting card sheets being consolidated with another American Greetings Corporation domestic production facility. The company did not import printed greeting card sheets during the relevant period.

The petitioners allege that American Greetings Corporation has been forced to restructure the company in order to cut costs, which resulted in lost jobs at the Corbin plant over a three year period, leading to the final closing of the subject plant. The petitioners further allege that the jobs lost at the Corbin plant is the result of American Greetings moving manufacturing production (candles, party goods, print greeting cards) from the Corbin plant to China, Mexico, Taiwan and Hong Kong. A copy of a label attached to the petitioner(s) request depicts that a product produced in China was imported directly to American Greetings Corp., Corbin, Kentucky.

A review of the initial decision and recent clarification by the company indicate there was no decline in the firm's customer base. Any declines in plant sales or production (party goods, gift wrap and bows, candles, printed greeting card sheets) are due to shifts in plant production to other domestic locations. That is, virtually all plant production was shifted to other domestic sources, except for a small portion of printed greeting card sheets that were ordered from a foreign source and scheduled to enter the United States beyond the relevant period of the investigation. In any event, the amount of printed greeting card sheets to be imported is relatively low and would not be considered a major contributing factor to the layoffs at the subject firm.

Further review and contact with the company shows that the preponderance in the declines in employment at the subject plant is related to other factors unrelated to imported products ''like or directly competitive'' with what the subject plant produced. That is, internet card competition and cost cutting measures such as the elimination of some high cost product lines and the consolidation of subject plant production to other affiliated domestic locations to cut costs are the dominant factors leading to the layoffs at the subject plant.

The Department contacted the company regarding a label attached and labels referenced in the petitioner's request for reconsideration. The company indicated that some of the products produced by the subject plant have been intermittently imported, but the amount of each type of product imported was negligible during the relevant period.

In a further allegation by the petitioner, it is indicated that the subject plant candle production was shifted to China and imported back to the United States. The company indicated candles imported back to the United States were negligible during the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 21st day of June 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17147 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,686]

Buehler Motor, Inc, Kinston, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 17, 2002, in response to a petition filed by a company official on behalf of workers at Buehler Motor, Inc., Kinston, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 25th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17140 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,779]

Bulk Lift International, Carpentersville, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 11, 2002 in response to a worker petition, which was filed, by the Union of Needletrades, Industrial and Textile Workers, Chicago and Central States Joint Board on behalf of workers at Bulk Lift International, Carpentersville, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 26th day of June, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–17134 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,320]

Elk Rapids Engineering, a Division of Star Cutter Company, Elk Rapids, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 16, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on May 7, 2002, and published in the **Federal Register** on May 17, 2002 (67 FR 35140).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Elk Rapids Engineering, Elk Rapids, Michigan was denied because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of imported CNC controlled machine tools while decreasing their purchases from the subject firm. The subject firm did not import CNC controlled machine tools.

The petitioner believes that their company as well as the entire machine tool industry in the United States has been significantly affected by increased imports of machine tools. The petitioner attempts to support this claim by providing a transcript of testimony given by the Association for Manufacturing Technology before the Committee on Small Business, U.S. House of Representatives on April 24, 2002. The petitioner also indicates that customers are spending less and importing more machine tools during the relevant period. The petitioner further attached a summary of U.S. Machine-Tool Orders depicting significant declines in orders during the last few years.

A review of the data supplied by the petitioner depicts industry wide data that is not specific to the products produced at the subject plant. The Department of Labor examines the direct impact of imports that are ''like or directly competitive'' with what the subject plant produced and if imports ''contributed importantly'' to the layoffs at the subject plant. The investigation revealed that imports of the product produced at the subject plant did not ''contribute importantly'' to the layoffs at the subject plant. The U.S. Machine-Tool Order data supplied by the petitioner depicts declines in U.S. machine-tool orders during the last few years. U.S. machine tool orders include those for the export market, as well as the domestic market. Thus a reduced demand for U.S. machine tools (depicted by orders) does not reflect a definitive increase in imports. Examination of industry data in which the subject firm's products are categorized shows that U.S. imports of products like or directly competitive with what the subject firm produced declined in 2001 over 2000.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17143 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,309]

Firestone Tube Co., a Division of Bridgestone/Firestone North American Tire, LLC, Subsidiary of Bridgestone Corp., Russellville, AR; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 14, 2002, the United Steelworkers of America, Local 884 requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 18, 2002, and published in the **Federal Register** on May 2, 2002 (67 FR 22114).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Firestone Tube Company, a division of Bridgestone/Firestone North American Tire, LLC, a subsidiary of Bridgestone Corp., Russellville, Arkansas was denied because criterion (2) was not met. Sales and production at the subject firm increased during the relevant period.

The petitioner alleges that plant production declined during the relevant

period and attempts to illustrate these declines in production by supplying plant statistics of cure sets (molds used in the production of tubes) to attempt to show that production of tubes at the subject plant declined during the relevant period.

A review of the initial decision shows that plant sales and production increased from January through September 2001 over the corresponding 2000 period. During the initial investigation the company reported declines in plant sales and production in the year 2000 over the 1999 period. However, due to the reported decline in sales and production during the year 2000, although not noted in the TAA decision, the U.S. Department of Labor conducted a survey of the major declining customers of the subject firm regarding their purchases of automobile inner tubes for the 1999, 2000 and the January through November 2001 period over the corresponding 2000 period. The survey is conducted to test if customer imports of like or directly competitive products as produced at the subject firm ''contributed importantly'' to the worker separations of the workers' firm. None of the customers reported importing inner tubes during the relevant period.

The United Steel Workers of America, Local 884 further alleges that the company is importing tubes from Korea and China to the Russellville, Arkansas plant and then sells the tubes to customers.

Further review of company data supplied during the initial investigation, shows that the company imported a grouping of small tubes, most of which the plant was unable to produce. The reported imports of these tubes were relatively stable during the relevant period. The amount of company tube imports like or directly competitive with what the subject firm produced was also relatively low, therefore imports like or directly competitive with what the subject plant produced did not contribute importantly to the layoffs at the subject firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17142 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,774]

Frederic Goldman, Inc., Casting Division, New York, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 11, 2002, in response to a worker petition, which was filed by the company on behalf of workers at Frederic Goldman, Inc., Casting Division, New York, New York.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 21st day of June, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–17145 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,434]

Notice of Termination of Investigation; Goodrich Corp., Spencer, WV

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 29, 2002, in response to a petition filed by a company official on behalf of workers at Goodrich Corporation, Spencer, West Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 18th day of June, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–17148 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,878]

JTD, Inc., Tigard, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 4, 2002, in response to a petition filed by a company official on behalf of workers at JTD, Incorporated, Tigard, Oregon.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 26th day of June, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–17135 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,529]

L–S Electro-Galvanizing Co., Cleveland, OH; Notice of Revised Determination on Reconsideration

By letter of May 23, 2002, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on April 22, 2002 based on the finding that imports of corrosion-resistant zinc coated cold rolled steel coils did not contribute importantly to worker separations at the Cleveland plant. The denial notice was published in the **Federal Register** on May 2, 2002 (67 FR 22112).

To support the request for reconsideration, the company official provided clarification concerning the relationship between the subject firm and their sole customer. The company official indicated that their sole customer was a majority owner (Joint Venture) of L–S Electro-Galvanizing Company (LSE), Cleveland, Ohio and that the subject firm was in direct support of that operation. The subject

firm applied a corrosion-resistant zinc coating on cold rolled steel coil substrate produced by the customer. The official further indicates that the closure of the customer facility at the same location as the subject firm is the reason for the closure of the subject plant. The company official further indicated that the sole customer was certified for TAA under TA–W–38,362.

Clarification by the company and review of the initial investigation show that the subject firm was in direct support of a TAA certified facility (TA–W–38,362, LTV Steel Company, Inc., Cleveland, Ohio) that had a majority controlling interest in the subject firm's operation. Since the workers of the subject firm were in direct support of the affiliated TAA certified facility, they meet all eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at L–S Electro-Galvanizing Company, Cleveland, Ohio, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of L–S Electro-Galvanizing Company, Cleveland, Ohio, who became totally or partially separated from employment on or after December 3, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 20th day of June 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17144 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,020]

Phelps Dodge Hidalgo Inc., Playas, NM; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 11, 2002, in response to a petition filed by the company on behalf of workers at Phelps Dodge Hidalgo, Inc., Hidalgo, Playas, New Mexico.

The petition has been deemed invalid. There are three signatures on the petition, but no petitioner information was provided which includes name, address, telephone, and the date of separation. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of June, 2002.

Curtis K. Kooser,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–17136 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,282, Wilmington, NC, TA–W–39,282A, Leland, NC, TA–W–39,282B, Kinston, NC, TA–W–39,282C, Grifton, NC, TA–W–39,282D, Charleston, SC, TA–W–39,282E, Moncks Corner, SC]

Standard Corporation, Integrated Logistics; Notice of Negative Determination Regarding Application for Reconsideration

By application dated on April 18, 2002, the company requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Standard Corporation, Integrated Logistics, Wilmington, North Carolina (TA–W–39,282), Leland, North Carolina (TA–W–39,382A), Kinston, North Carolina (TA–W–39,282B), Grifton, North Carolina (TA–W–39,282C), Charleston, South Carolina (TA–W–39,282D) and Moncks Corner, South Carolina (TA–W–39,282E) was signed on March 5, 2002, and published in the **Federal Register** on March 20, 2002 (67 FR 13012).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Standard Corporation, Integrated Logistics, Wilmington, North Carolina (TA–W–39,282), Leland, North Carolina (TA–W–39,382A), Kinston, North Carolina (TA–W–39,282B), Grifton, North Carolina (TA–W–39,282C), Charleston, South Carolina (TA–W–39,282D) and Moncks Corner, South Carolina (TA–W–39,282E) engaged in activities related to providing distribution and warehousing services for an unaffiliated customer that produces polyester fibers. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

In the request for reconsideration, the company indicated that Standard Corporation workers play a vital role in the manufacturing of polyester fibers for Dupont. The petitioner indicated that once the polyester fibers are released from the Dupont Corporation production area, the product is then transported through an in-line conveyor system to the Standard Corporation work area. Standard Corporation associates off-load the polyester fiber and perform the packaging, quality checks, as well as, transport the product to a designated staging area within the Dupont Manufacturing plant.

The new data supplied by the petitioner show that the subject plant workers performed services that are a stage beyond the production performed at the unaffiliated, certified TAA Dupont Corporation, Polyester Enterprise, (Wilmington, North Carolina, TA–W–39,743, Kinston, North Carolina, TA–W–39,743A and Charleston, South Carolina, TA–W–39,743B) plants. Therefore, as indicated in the initial decision, workers do not produce an article within the meaning of section 222(3) of the Trade Act of 1974, is correct.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17141 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,167; Tri-Way Manufacturing, Inc., El Paso, TX

TA–W–41,268; Truman Logging, Inc., Rexford, MT

TA–W–41,186; Swanson Erie Corp., Assembly Systems, Erie, PA

TA–W–40,150; Tyco Electronics, Global Application Tooling Div., A Subsidiary of Tyco Electronics Ltd, Mt. Sidney, VA

TA–W–41,316; Quality Components, Klamath Falls, OR

TA–W–41,259; Fibermark, Inc., Rochester, MI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–41,272; Amdocs, Inc., Hillsboro, OR

TA–W–40,846; Praxair, Inc., Niagara Falls, NY

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–41,467; I.C. Isaac and Co., Inc., New York, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,569; ZF-Meritor, LLC, Meritor Clutch Co., Maxton, NC

TA–W–41,178; Pabst Brewing Co., Lehigh Valley Plant, Fogelsville, PA

TA–W–41,302; Motorola, Inc., Arlington Heights, IL

TA–W–41,032; Bard Manufacturing Co., Bryan, OH: ''All workers engaged in employment related to the production of finished full units are denied eligibility to apply for adjustment assistance''

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–41,032; Bard Manufacturing Co., Bryan, OH: ''All workers engaged in employment related to the production of air conditioning coils who became separated on or after January 10, 2001.

TA–W–41,108; Cedar Hill Manufacturing, Inc., Ansonville, NC: February 25, 2001.

TA–W–41,116; Standard Fusee Corp., d/b/a Orion Safety Products, South Beloit, IL: February 19, 2001.

TA–W–41,122; Cer-Tek, Inc., El Paso, TX: March 25, 2001.

TA–W–41,244; Turbon, Jetfill Div., Houston, TX: June 1, 2000.

TA–W–41,279; Levolor Kirsch Window Fashions, Newell Rubbermaid Div., Shamokin, PA: March 12, 2001.

TA–W–41,007; Emerson Appliance Motors, Exford, MS: January 8, 2001.

TA–W–41,009; Washington Frontier Juice, Prosser, WA: January 31, 2001.

TA–W–41,293; Pittsburgh Tool Steel, Inc., Monaca, PA: October 8, 2000.

TA–W–40,341; Meadowcraft, Inc., Somerton, AZ: November 1, 2000.

TA–W–40,526 and A; HMG Intermark Worldwide Manufacturing, Inc., Plant R–1, Reading, PA and Plant R–5, Reading, PA: October 23, 2000.

TA–W–40,840; Bradley Scott Clothes, Fall River, MA: October 26, 2000.

TA–W–41,233; Associated Garments LLP, Miami, FL: February 19, 2001.

TA–W–41,285; United States Enrichment Corp. (USEC), Portsmouth Gaseous Diffusion Plant, Piketon, OH: June 16, 2002.

TA–W–41,276; GBC Office Products Group, Ashland, MS: March 6, 2001.

TA–W–41,179; Pemco, Inc., Sheboygan, WI: February 14, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–06205; ZF-Meritor, LLC, Meritor Clutch Co., Maxton, NC
NAFTA–TAA–05955; Swanson Erie Corp., Assembly Systems, Erie, PA
NAFTA–TAA–05981; Truman Logging, Inc., Rexford, MT
NAFTA–TAA–05853; Tri-Way Manufacturing, Inc., El Paso, TX
NAFTA–TAA–05835; Pabst Brewing Co., Lehigh Valley Plant, Fogelsville, PA
NAFTA–TAA–05949; Schaeff, Inc., A Subsidiary of Terex, Sioux City, IA
NAFTA–TAA–06196; Bemis Manufacturing Co., Crandon Div., Crandon, WI
NAFTA–TAA–05974; Quality Components, Inc., Klamath Falls, OR

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–05783; Maska U.S., Inc., A Subsidiary of The Hockey Co., Williston, VT
NAFTA–TAA–05764; J. Dashew, Inc., Baltimore, MD

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06187; Honeywell International Garett Engine Boosting (Formerly Doing Business as Allied Signal), Garrett Engine Boosting Systems, Torrance, CA: April 14, 2002.
NAFTA–TAA–06113; Crossroad Knitting, Inc., Claudville, VA: April 15, 2001.
NAFTA–TAA–06107; Modine Manufacturing Co., Emporia Facility, Emporia, KS: January 16, 2001.
NAFTA–TAA–06102 & A; Harris Welco, Plastics Departmentm Kings Mountain, NC and Personnel Services Unlimited, Kings Mountain, NC (Employed in the Plastics Department, Harris Welco, Kings Mountain, NC): April 22, 2001.
NAFTA–TAA–06063; Celestica, Inc., Westminster, CO: March 29, 2001.
NAFTA–TAA–05978; Fourply, Inc., Plywood Div., Grans Pass, OR: March 8, 2001.
NAFTA–TAA–5964; Levolor Kirsch Window Fashions, Newell Rubbermaid Div., Shamokin, PA: March 12, 2001.
NAFTA–TAA–05914; Cedar Hill Manufacturing, Inc., Ansonville, NC: February 15, 2001.

I hereby certify that the aforementioned determinations were issued during the month of June, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 3, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17138 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,024]

Whisper Jet Inc., Sanford, FL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 11, 2002, in response to a petition filed by a company official on behalf of workers at Whisper Jet, Inc., Sanford, Florida.

The petitioner submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 26th day of June, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–17137 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05773]

Superior Milling, Inc., Watersmeet, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 29, 2002, the employees requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 18, 2002, and was published in the **Federal Register** on May 2, 2002 (67 FR 22115).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers engaged in activities related to the production of rough green lumber at Superior Milling, Inc, Watersmeet, Michigan was based on the finding that criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of Section 250 of the Trade Act, as amended, were not met. There were no increased company imports of rough green lumber from Mexico or Canada, nor did the subject firm shift production from the subject plant to Mexico or Canada. A survey of customers conducted by the Department of Labor revealed that customers did not increase their import purchase of products like or directly competitive with those produced at the Watersmeet plant from Canada or Mexico during the relevant period.

The petitioner alleges that some customers of the subject plant imported rough green lumber during the relevant period. The petitioner also specifies which customers they believe are importing rough green lumber and thus impacting the subject plant.

A review of the initial investigation and the corresponding survey results conducted during the investigation shows that the company supplied a customer list that accounted for greater than 85% of the subject plant's sales for the years 2000 and 2001. Extrapolating the provided customer list sales from subject plant sales shows that the unreported customers as a group increased their purchases from the subject firm during the relevant period.

During the initial investigation the Department of Labor surveyed the reported declining customers of the subject firm regarding their purchases of rough green lumber during the relevant period (2000 and 2001). The survey revealed that none of the respondents increased their imports of rough green lumber from Canada or Mexico during the relevant period.

The petitioner further alleges that a major customer imported a sizeable amount of flooring stock from Canada and believes that those imports

adversely affected the profitability of the Superior Milling.

Imports of flooring stock from Canada by the major customer is not ''like or directly competitive'' with articles produced by the firm and therefore is not a relevant factor in meeting the eligibility requirement of section 250 of the Trade Act.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 21st day of June 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17149 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Local Area Unemployment Statistics (LAUS) Program.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section below on or before September 9, 2002.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The BLS has been charged by Congress (29 USC Chapters 1 and 2) with the responsibility of collecting and publishing monthly information on employment, the average wage received, and the hours worked by area and industry. The process for developing residency-based employment and unemployment estimates is a cooperative Federal-State program which uses employment and unemployment inputs available in State Employment Security Agencies (SESAs).

The labor force estimates developed and issued in this program are used for economic analysis and as a tool in the implementation of Federal economic policy in such areas as employment and economic development under the Workforce Investment Act and the Public Works and Economic Development Act, among others.

The estimates also are used in economic analysis by public agencies and private industry, and for State and area funding allocations and eligibility determinations according to legal and administrative requirements. Implementation of current policy and legislative authorities could not be accomplished without collection of the data.

The reports and manual covered by this request are integral parts of the LAUS program insofar as they insure and/or measure the timeliness, quality, consistency, and adherence to program directions of the LAUS estimates and related research.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Action

The BLS is revising the information collection request that makes up the LAUS program.

All aspects of the program are automated. All data are entered directly into BLS-provided systems.

The BLS, as part of its responsibility to develop concepts and methods by which SESAs prepare estimates under the LAUS program, developed a manual for use by the SESAs. The manual explains the conceptual framework for the State and area estimates of employment and unemployment, specifies the procedures to be used, provides input information, and discusses the theoretical and empirical basis for each procedure. This manual is updated on a regular schedule.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Local Area Unemployment Statistics (LAUS) Program.

OMB Number: 1220–0017.

Affected Public: State government.

Total Respondents: 52.

Frequency: Monthly and Annually.

Total Responses: 87,300.

Average Time Per Response: 1.60 hours.

Estimated Total Burden Hours: 139,680 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 28th day of June, 2002.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 02–17150 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Peabody Coal Company

[Docket No. M–2002–046–C]

Peabody Coal Company, 1970 Barrett Court, P. O. Box 1990, Henderson, Kentucky 42419–1990 has filed a petition to modify the application of 30 CFR 75.1101–1(b) (Deluge-type water spray system) to its Gibraltar Highwall Mine (I.D. No. 15–17495) located in Muhlenberg County, Kentucky. The petitioner requests a modification of the existing standard to permit an alternative method for conducting functional tests of its complete deluge-type water system. The petitioner proposes to conduct these tests on a weekly basis instead of annually. The petitioner states that the existing standard will not allow the system to be functionally tested weekly because the dust covers could be blown off and to return the water spray system safely for compliance with the existing standard, the belt would have to be de-energized, locked and tagged, and the dust cover would have to be replaced, which would take approximately 30 minutes per belt drive. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard since any restrictions to the spray system otherwise prevented by the blow-off dust covers would be recognized during the weekly functional test and promptly corrected. The petitioner has requested that this petition be withdrawn due to the mine being worked out and ceasing operations.

2. Husky Coal Company, Inc.

[Docket No. M–2002–047–C]

Husky Coal Company, Inc., P.O. Box 3311, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.503 and 30 CFR 18.41(f) (Permissible electric face equipment; maintenance) to its No. 12 Mine (I.D. No. 15–16974) located in Pike County, Kentucky. The petitioner proposes to use a permanently installed, spring-loaded device on mobile battery-powered machine plug connectors in lieu of a padlock to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Buck Mountain Coal Company

[Docket No. M–2002–048–C]

Buck Mountain Coal Company, 11 S. Pine Street, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.381 (Escapeways; anthracite mines) to its Buck Mountain Slope Mine (I.D. No. 36–01962) located in Schuylkill County, Pennsylvania. The petitioner proposes to establish two separate and distinct travelable passageways designated as escapeways continuous from each working section to a point within the mine at the intersection of these two escapeways with an existing rock tunnel and maintain one means of ingress/egress from this point to approximately 900 feet to the surface. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Peabody Coal Company

[Docket No. M–2002–049–C]

Peabody Coal Company, 202 Laidley Tower, P.O. Box 1233, Charleston, West Virginia 25324–1233 has filed a petition to modify the application of 30 CFR 75.901 (Protection of low- and medium-voltage three-phase circuits used underground) to its Highland Mine (I.D. No. 15–02709) located in Union County, Kentucky. The petitioner proposes to use a 480-volt, three-phase diesel powered generator to move equipment using specific procedures outlined in this petition. The petitioner states that specific hands on training will be provided to all qualified persons on the proper testing procedures to be utilized and incorporate this training in its part 48 training plans and in the annual refresher training plans for the mine and submit the proposed revisions for its part 48 training plan to the Coal Mine Safety and Health District Manager. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Bubber Coal Company, Inc.

[Docket No. M–2002–050–C]

Bubber Coal Company, Inc., P.O. Box 43, Kite, Kentucky 41653 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its No. 1 Mine (I.D. No. 15–17547) located in Knott County, Kentucky. The petitioner proposes to use permanently installed, spring-loaded locking devices to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov,'' or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, 23rd Floor, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before August 8, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 2nd day of July, 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–17112 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before August 8, 2002, to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. J. Zieher, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on April 16, 2002 (67 FR 18638 and 18639). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Generic clearance for user satisfaction research on Internet sites.

OMB number: 3095–NEW.

Agency form number: N/A.

Type of review: Regular.

Affected public: Individuals and households.

Estimated number of respondents: 4,000.

Estimated time per response: 5 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 333 hours.

Abstract: This is a request for a three-year generic clearance to conduct user satisfaction research for our Internet sites. This effort is made according to Executive Order 12862, which directs Federal agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

Dated: July 1, 2002.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 02–17039 Filed 7–8–02; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–36000]

Environmental Assessment and Finding of No Significant Impact for a New Byproduct Material License Requested by the U.S. Army Contaminated Equipment Retrograde Team Field Service Facility, Rock Island Arsenal, Rock Island, IL; Notice of Availability

Environmental Assessment Summary

The U.S. Nuclear Regulatory Commission is considering issuing a new Byproduct Material License Number 12–00722–15 to the Department of the Army to authorize the collection of unwanted Army commodities containing radiological sources, and preparation of these sources for shipment and proper disposal using the Army Contaminated Equipment Retrograde Team Field Services Facility (ACERTSF) located in Rock Island, Illinois.

This Environmental Assessment (EA) reviewed the potential environmental impacts associated with the proposed activities outlined in the Department of the Army's April 10, 2002, license application. The EA considered the licensee's proposed radiation protection program, and the types, quantities, the physical forms of the radioactive materials to be received, processed, stored and shipped by the Army at its proposed location. The EA included evaluation of the building, adjoining grounds, security, fire protection, and engineering controls used to ensure the safe use of licensed materials.

Proposed Action

The ACERTSF proposes to receive unwanted DoD commodities containing radiological sources, consolidate the sources into U.S. Department of Transportation (DOT) approved shipping containers, and ship the consolidated sources to an NRC approved disposal facility, or to another authorized NRC or Agreement State licensee for reuse.

The Service Facility will process radioactive sealed sources or commodities containing radioactive material in solid, non-dispersible form. The consolidation process will not involve any physical or chemical work which could damage or change the integrity of the radioactive sealed sources. If a commodity is determined to be damaged upon receipt with the potential for leakage of the radioactive sealed source, it will be repackaged appropriately, without any processing, and sent to an appropriate waste disposal facility.

The isotopes to be received will include americium-241, carbon-14, cesium-137, lead-210, nickel-63, promethium-147, cobalt-60, strontium-90, thorium (natural and alloyed with magnesium), uranium (depleted), special nuclear material (check sources only) and sealed sources in gaseous form i.e. hydrogen 3 and krypton 85. The radioactive sealed sources have been evaluated and registered with the NRC pursuant to 10 CFR Part 32, § 32.210, Registration of product information. Additionally, ACERTSF management has established maximum possession limits for each isotope, such that an Emergency Plan pursuant to 10 CFR Part 30, § 30.72 Schedule C—Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release, is not required. The Army also does not intend to store radioactive material for long periods of time. The Army has committed to make shipments of material after repackaging, approximately every 180 days.

Need for Proposed Action

The Army request will:

- Reduce personnel and transportation costs associated with the retrieval of the sealed sources, from temporary job-sites throughout the U.S. or U.S. military bases in other countries;
- Reduce the disposal cost, since the use of each DOT shipping container can be maximized by filling each container to capacity rather than putting one device/sealed source in it for disposal;
- Conserve limited land disposal resources;
- Ensure that the personnel retrieving the sealed sources and devices are specifically authorized to perform these activities, and that they have the most current and highest level of radiological training;
- Ensure that processing of the radioactive materials will be done in a specially designed facility, rather than at temporary job-sites and foreign US military bases; and
- Reduce the turn around time for receipt of reports of leak tests performed on radioactive sources, to verify their acceptability for receipt or transfer.

Environmental Impacts of the Proposed Action

NRC staff reviewed the proposed consolidation and recycle activities, the licensed radiation protection program, and the potential for release of radioactive materials from the Service Facility. The work practices and safety criteria are specified in the Army's application so that operational activities will meet the 10 CFR Part 20 radiation protection requirements. Worker and public doses will be limited so that exposures will not exceed Part 20 requirements and are as low as reasonably achievable.

The EA also addressed other Non-radiological impacts, such as transportation, air quality, noise, environmental justice, and endangered species.

Alternatives to the Proposed Action

The alternatives, and the associated impacts and conclusions, are discussed in the EA. These included: no action; contracting with private vendors; and, the proposed action.

Conclusions

Based on the NRC staff evaluation of the licensee's April 10, 2002 license application, for the Rock Island Arsenal facility, as documented in the EA, the staff has determined that the proposed activities can be accomplished in compliance with NRC's public and occupational dose limits, effluent release limits, and residual radioactive material limits. In addition, the issuance of the license will not result in a significant adverse impact on the public health and safety or the environment.

Agencies and Individuals Contacted

NRC staff consulted with the Illinois Department of Nuclear Safety.

Finding of No Significant Impact

Based upon the analysis documented in the EA, the Commission concludes that the proposed action will not have a significant impact on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

The NRC Notice of Opportunity for a Hearing will consider all written comments received before July 31, 2002. Comments received after July 31, 2002, may be considered if time permits. Comments should be addressed to the contact listed below.

ADDRESSES: The document U.S. Army Contaminated Equipment Retrograde Team Field Service Facility, Rock Island, Illinois, Environmental Assessment, Finding of No Significant Impact, is available for inspection and copying for a fee at the Commission's Public Document Room, U.S. NRC, Region III, 801 Warrenville Road, Lisle, Illinois 60532.

SUPPLEMENTARY INFORMATION: The EA is available for review at NRC's Electronic Reading Room, on the NRC's Web site at *http://www.nrc.gov/reading-rm/adams.html*. The accession [file] number for this document is ML021790380. The NRC Project Manager for this action is Mr. George McCann. Mr. McCann can be reached at (630) 829–9856 at the following address: U.S. Nuclear Regulatory Commission, 801 Warrenville Rd., Lisle, Illinois 60532–4351.

Dated at Lisle, Illinois this 28th day of June, 2002.

For the Nuclear Regulatory Commission.

Bruce L. Jorgensen,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, RIII.

[FR Doc. 02–17119 Filed 7–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143]

Environmental Assessment and Finding of No Significant Impact of License Amendment for Nuclear Fuel Services, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Amendment of Nuclear Fuel Services, Inc., Materials License SNM–124 to authorize construction and operation of the Uranyl Nitrate Storage Building.

The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License SNM–124 to authorize construction and operation of the Uranyl Nitrate Storage Building at the Nuclear Fuel Services site in Erwin, Tennessee, and has prepared an Environmental Assessment in support of this action. The accession number for the Environmental Assessment is ML021790068.

Summary of Environmental Assessment

Identification of the Proposed Action

The proposed action currently before the U.S. Nuclear Regulatory Commission (NRC) is to allow the licensee to construct and operate a Low-Enriched Uranyl Nitrate Storage Building (UNB) at the Nuclear Fuel Services, Inc. (NFS) site in Erwin, Tennessee, and to increase the ^{235}U possession limit. This action is part of the Blended Low-Enriched Uranium (BLEU) project described below. The other related future activities which were considered to contribute to the environmental impacts for this project are: construction and operation of an Oxide Conversion Building (OCB), construction and operation of a new Effluent Processing Building (EPB), and relocation of downblending operations within the NFS protected area in a BLEU Preparation Facility (BPF).

On March 4, 2002, NRC issued a notice of intent to prepare an environmental assessment (EA) for amendment of Special Nuclear Material (SNM) License No. SNM–124 for NFS. To avoid segmentation of the environmental review, NFS has submitted environmental documentation for three proposed license amendments, which will impact the site over the next few years.

The Environmental Assessment (EA) for these actions does not serve as authorization for any proposed activities, rather it assesses the environmental impacts of the actions. As each amendment application is submitted, the NRC staff will perform a separate safety evaluation, which will be the basis for the approval or denial of the application. As part of the safety evaluation, the NRC will perform an environmental review. If the review indicates that this EA appropriately and adequately assesses the environmental effects of the proposed action, then no further assessment will be performed. However, if the environmental review indicates that this EA does not evaluate fully the environmental effects, another EA [or environmental impact statement (EIS)] will be prepared in accordance with the National Environmental Policy Act (NEPA).

Need for the Proposed Action

The Blended Low Enriched Uranium (BLEU) Project is part of a Department of Energy (DOE) program to reduce stockpiles of surplus high enriched uranium (HEU) through re-use or disposal as radioactive waste. Re-use as low enriched uranium (LEU) is considered the favorable option by the DOE because (1) weapons grade material is converted to a form unsuitable for nuclear weapons (addressing a proliferation concern), (2) the product can be used for peaceful purposes, and (3) the commercial value of the surplus material can be recovered. An additional benefit of re-use is avoidance of unnecessary use of limited radioactive waste disposal space. Framatome ANP Inc. has contracted

with NFS to downblend surplus HEU material to a LEU nitrate and to convert the LEU to an oxide form. The NFS LEU oxide product is expected to be fabricated into commercial reactor fuel at a separate facility, for use in a Tennessee Valley Authority (TVA) nuclear power reactor; however, the NFS proposed action is limited to the production of LEU oxide, receipt and storage of LEU nitrate, down blending of HEU to LEU, and conversion of LEU nitrate to LEU oxide.

Environmental Impacts of the Proposed Action

For the proposed license amendments, construction and processing operations will result in the release of low levels of chemical and radioactive constituents to the environment. Under accident conditions, higher concentrations of materials could be released to the environment over a short period of time.

Normal Operations

Radiological impacts from the proposed BLEU Project operations include release of small quantities of radioactive material to the atmosphere and surface water. Radionuclides that may be released include isotopes and some daughter products of the actinide elements uranium, thorium, plutonium, americium, actinium, and lesser quantities of fission products including technetium, cesium, and strontium. Based on source material properties and processing information, NFS has estimated the quantities of airborne and liquid effluents and used this information to estimate doses to the maximally exposed individual. While some effluents for the proposed action are increasing in relation to current releases, the total annual dose estimate for the maximally exposed individual from all planned effluents is 0.022 mSv (2.2 mrem). This result is well below the annual public dose limit of 1 mSv (100 mrem) in 10 CFR Part 20 and the 0.1 mSv (10 mrem) ALARA constraint. The estimated dose for a number of radionuclides is conservative, because the analysis assumed no pollution controls were in place.

Solid wastes generated by BLEU Project operations will be packaged into drums or boxes. Each container will be assayed for uranium content to verify that storage, shipment, and disposal requirements are met.

The potential for increase in dose to workers at NFS due to the BLEU project was evaluated. Operation of the BPF, OCB and UNB is not expected to increase the dose to workers at the NFS facility, because the types and quantity of material, and the processing, will be similar to what is already licensed at the site. NFS is committed to keeping doses as low as reasonable achievable (ALARA) by maintaining a radiation protection program that minimizes radiation exposures and releases of radioactive material to the environment. In order to accomplish this, NFS has procedures for working with radioactive materials and monitoring programs to determine the doses received by employees.

Impacts from non-radiological contaminants to air, surface water, and groundwater were also assessed. Air quality is protected by enforcing emission limits and maintenance requirements for pollution control equipment, as required by several operating permits issued by the Tennessee Air Pollution Control Board, Department of Environment and Conservation. The primary non-radiological emissions are expected to include nitrogen oxides, hydrogen and ammonia. Normal emissions of gaseous effluents from the new processes are not expected to have a significant impact on offsite non-radiological air quality, because the estimated concentrations at the nearest site boundary are below the State of Tennessee primary air quality standards, with the exception of nitrogen oxides. For nitrogen oxides, NFS will exceed the current allowable limit; however, NFS is requesting modification to the existing air pollution control permit for the main stack. Modification of the permit is required because of changes in material input from the BPF and installation of additional process and ventilation equipment. This modified permit for the main stack has not been issued as of this EA; however, NRC expects that the State, under its authority to regulate air quality, will continue to set permit levels to limit environmental impacts from NFS effluents.

The proposed BPF and BLEU Complex are expected to produce liquid effluents. BPF waste streams will be sent to the NFS wastewater treatment facility and discharged into the Nolichucky River in accordance with the National Pollutant Discharge Elimination System (NPDES) permit and NRC radiological effluent limits in 10 CFR part 20. This liquid effluent will consist of raffinate, condensate, scrubber waste solution, and sodium hydroxide. The basic and acidic waste streams will be treated using precipitation and ion exchange processes.

Surface water quality is expected to be protected from future site activities by enforcing release limits and monitoring programs, as required under the NPDES permit. No impact on NPDES permit limits is anticipated with respect to operations at the proposed BLEU Complex or downblending at the BPF. Surface water runoff from the proposed action will generally flow to the northwest across the proposed BLEU Complex. This runoff will drain to culverts at the northwest boundary of the NFS site, and then empty into Martin Creek. A storm water construction permit will be obtained from the Tennessee Department of Environment and Conservation prior to any construction activities that would disturb the land. Erosion and sediment control measures (e.g., straw bales and silt fences) will be employed to mitigate surface runoff into the drainage ditches and Martin Creek, thus reducing the impacts to surface water during the construction of the proposed BLEU Complex. Sluice gates will be installed at collection points within the proposed BLEU Complex for containment of any hazardous spills during the lifetime of BLEU operations.

Previous operation of the plant has resulted in localized chemical and radiological contamination of groundwater, including beneath the BPF. Groundwater monitoring conducted by NFS indicates that plumes of uranium, tetrachloroethylene, trichloroethylene, 1,2-dichloroethylene, and vinyl chloride, from past operations, could migrate offsite in the direction of the Nolichucky River. To address potential environmental impacts from this contamination, NFS has removed much of the source contamination through extensive remediation projects including excavation of contaminated areas in the North Site. In addition, NFS is decommissioning the Radiological Burial Ground and the North Site to remove more of the source of this contamination. NFS also is working with the Tennessee Department of Environment and Conservation and the U. S. Environmental Protection Agency to design remedial strategies and to investigate the off-site extent of existing plumes.

The addition of the BLEU Complex will expand the physical site of the Erwin plant. Current environmental monitoring stations do not provide adequate coverage of the expanded site area. In addition, the current monitoring program lacks adequate coverage for groundwater in the vicinity of the proposed BLEU Complex. NFS plans to expand the existing environmental monitoring program to cover the BLEU Complex. Additional monitoring locations (e.g., air, vegetation, soil,

groundwater) will be proposed in a forthcoming license amendment request for the BLEU Project. For groundwater monitoring, NFS has indicated a minimum of one upgradient and three downgradient wells will be installed in the vicinity of the proposed BLEU Complex. NRC review of the proposed environmental monitoring program to determine compliance with 10 CFR part 20 requirements provides assurance that an adequate program will be in place prior to making a decision on the license amendments.

For normal operations, the proposed action will not discharge any effluents to the groundwater; therefore, no adverse impacts to groundwater are expected. Accidental releases of contaminants to groundwater appear unlikely due to design and control measures implemented by NFS.

A field investigation was conducted on the proposed BLEU complex site to determine the absence or presence of rare, threatened, or endangered plants. The survey focused primarily on the twenty federally listed threatened and endangered plants, but the State of Tennessee listing of rare and endangered vascular plants was also used for this survey. The results of the survey were that none of the plants on the federal or state lists were found to be present on this site, and the proposed actions on this site are not likely to adversely affect state and federally listed rare, threatened, or endangered plant species.

Unicoi County, the area in which the NFS site is located, contains one Federally Endangered mussel species, Appalachian elktoe (Alasmidonta raveneliana) near the confluence of the Nolichucky River and South Indian Creek. Because this is upstream of the confluence of the Nolichucky River and Martin Creek and the NFS site, no impact is expected on this species. No other threatened or endangered species listed on the Federal or State Threatened or Endangered Species List for the Region of Interest are known to potentially reside on the NFS site.

No impacts are expected on land use, biotic resources, socioeconomic resources, or cultural resources.

Accident Conditions

The conversion of HEU materials to low-enriched uranium dioxide at the BLEU Project will require the handling, processing, and storage of radioactive material and hazardous chemicals. An uncontrolled release of these materials from accidents could pose a risk to the environment as well as to workers and public health and safety.

The evaluation of potential accidents is carried out at a general level of detail in the EA to establish that the proposed processes, as described by NFS, will function safely with no significant adverse impacts to safety or the environment. A more detailed evaluation of the proposed processes will be carried out by the NFS in its integrated safety analysis, summaries of which will be submitted in the forthcoming BLEU Project license amendment requests.

The dissolution and downblending of HEU feed materials to low-enriched uranyl nitrate (UN) solution will be carried out in the BLEU Processing Facility. Remaining operations will be performed in the BLEU Complex area. This will include the storage of low-enriched UN solution in the UNB followed by further processing into uranium dioxide powder in the OCB, and treatment of the liquid effluent stream from the OCB in the EPB.

The primary chemicals used in the dissolution and downblending processes taking place in the BPF are: Nitric acid (70 percent solution); hydrogen peroxide (30 percent solution); sodium hydroxide (30 percent solution); sodium nitrate (45 percent solution); barium oxide (BaO); tributyl phosphate [$(C_4H_9)_3PO_4$]; normal paraffin fluid (Nopar 12 fluid); sodium carbonate (Na_2CO_3). The radioactive feed materials used include HEU/aluminum alloy, HEU metal (buttons), and natural uranium oxide. Reaction products and intermediates include sodium diuranate and UN solutions.

The main chemicals to be used and stored in the BLEU Complex are: low-enriched UN solution, anhydrous ammonia, aqueous ammonia (23 percent solution), nitric acid (50 percent solution), nitric acid (7 percent solution), liquid nitrogen, sodium hydroxide (50 percent solution), liquified petroleum gas (propane), and diesel fuel.

Many of the proposed process operations are patterned after existing NRC licensed processes, so operational experience and history build confidence that operations can be executed safely. Proposed process operations, such as the downblending of high-enriched UN to low-enriched UN, liquid-liquid extraction to purify UN solution, and HEU storage are very similar to corresponding processes licensed under NRC License SNM–124. The LEU solution will be converted to uranium dioxide powder in the OCB using the Framatome ANP Inc. process that is authorized by NRC License SNM–1227. Potential hazards associated with new operations were evaluated during the NRC review.

Primary hazards associated with the operation of the BLEU Project facilities involve: spill of chemical and or radioactive material in the building, leak in a storage tank or supply piping, release of gaseous and particulate effluents (chemical and/or radioactive materials) due to a malfunction of the process off gas treatment system, and upset in the control of process parameters leading to undesirable reactions and release of hazardous or explosive compounds such as hydrogen, hydrogen peroxide, ammonia, nitrogen oxides, nitric acid vapors. The loss of control of the process may include release of radioactive materials and nuclear criticality. These accidents can potentially impact worker safety, public health and safety, and the environment.

Primary controls relied upon to guard against inadvertent nuclear criticality in processing operations include concentration limits and use of favorable geometry process vessels. Measures to ensure chemical safety and safe handling of radioactive materials include the following:

- Tanks will be bermed for spill control and isolation
- Tanks will be equipped with level control for overfill protection
- Process off gases will be treated through scrubbers and HEPA filters prior to stack discharge
- Process parameters will be controlled, and concentrations of hazardous or explosive chemicals will be maintained at safe levels. For example, sodium nitrate will be used in the HEU aluminum alloy dissolution process to minimize the formation of hydrogen, and air will be used in the dissolver to dilute the small quantities of hydrogen formed to safe levels

Based on the information furnished in the NFS reports and summarized above, the safety controls to be employed in the processes for the BLEU Project appear to be sufficient to ensure planned processing will be safe.

Cumulative Impacts

The Studsvick Facility is located adjacent to the NFS property, just south of the proposed BLEU complex. This facility is licensed by the state to process radioactive wastes. Due to the proximity of the two facilities, the staff evaluated cumulative radiological impacts from air effluents, liquid effluents, and direct radiation. The annual average of NFS effluent data from 1996 through 2000 and the most recent effluent data (CY2000) from the operations at Studsvick adequately characterize the impacts from current

operations. Foreseeable future impacts of the BLEU Project (including BLEU Preparation facility, additional Waste Water Treatment Facility effluents and BLEU Complex effluents) were also considered.

Future impacts from air emissions from NFS operations are estimated using environmental monitoring data from 1996 through 2000. The air emissions estimate for Studsvick, Inc., is based on year 2000 data. To bound the impacts, the baseline dose from NFS operations and current estimates of doses attributable to Studsvick are added to the foreseeable future impacts of BLEU Project operations. Though it is not likely that the same individual is the maximally-exposed individual for each of the facilities, the sum of these doses are considered to bound future impacts.

As demonstrated in semi-annual effluent reports, current liquid releases from the NFS site are well within the regulatory limits listed in 10 CFR part 20. NFS has provided conservatively-derived estimates of future discharges from the BLEU Project which were estimated using NCRP 123. The dose from these effluents, which are dominated by contributions from the solvent extraction raffinate at the BLEU preparation facility, when added to existing effluents, remain within regulatory limits.

The staff evaluated cumulative impacts to the sewer system of combined NFS, BLEU Project and Studsvick by estimating bounding concentrations that would be present in individual streams. NFS estimated the discharge from the BLEU Complex to be 6,300 gallons per day. This daily discharge volume was used to convert estimated quantities of annual discharges from the BLEU Complex (in units of curies) in terms of liquid concentration. Concentration values for Studsvick were also obtained from a year 2000 inspection report.

The bounding contributions from either NFS baseline operations or future BLEU operations are used to compare against the 10 CFR part 20, appendix B sewer discharge limits. These impacts, along with the discharge fractions from Studsvick operations, are summed for comparison using the unity rule. The value of 0.059 is considerably less than 1, which indicates that sewer discharges will remain a low cumulative impact.

Direct radiation monitoring data are available for both Studsvick, Inc. and NFS operations. Both licensees and the State of Tennessee Department of Environment and Conservation monitor direct radiation. Because the direct radiation monitored at the fenceline is a cumulative value (dose from both sites), the monitoring program ensures that this dose will not exceed regulatory limits. Both facilities have successfully demonstrated compliance in the past. Due to the nature of the materials in the BLEU complex, direct radiation is not expected to increase as a result of this project.

Agencies and Persons Consulted

The following agencies were consulted during the preparation of the EA:

- Tennessee Historical Commission, Division of Archaeology
- U.S. Fish and Wildlife Service, and
- State of Tennessee, Department of Environment and Conservation, Division of Radiological Health.

Conclusion

The NRC has concluded that the proposed action to construct and operate the UNB at the NFS site will not result in significant impact to human health or the environment.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment, as summarized above, related to the amendment of Special Nuclear Material License SNM–124. On the basis of the assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' the Environmental Assessment and the documents related to this proposed action will be available electronically for public inspection from the Publicly Available Records (PARS) component of NRC's document system (ADAMS), accession number ML021790068. ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

Notice of Opportunity for Hearing

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Nuclear Fuel Services, 1205 Banner Hill Road, Erwin Tennessee, 37650–9718; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to Micheal Lesar, Chief, Rules Review and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Dated at Rockville, Maryland, this 28th day of June, 2002.

For the U.S. Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–17118 Filed 7–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 136th meeting on July 23–25, 2002, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B3.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, July 23, 2002

A. *12:30–12:40 p.m.: Opening Statement*—(Open)—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate several items of interest.

B. *12:40–3:15 p.m.: Yucca Mountain Review Plan, Revision 2* (Open)—The Committee will hear presentations from industry and government representatives on the proposed plan. In addition it will discuss the elements of a letter report.

C. *3:30–6 p.m.: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics:

- Long-Term Behavior of Waste Packages
- Igneous Activity Considerations
- High-Level Waste Performance Assessment Sensitivity Studies

Wednesday, July 24, 2002

D. *8:30–8:35 a.m.: Opening Statement* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

E. *8:35–9:40 a.m.: Greater-than-Class C (GTCC)* (Open)—The Committee will be briefed by a DOE representative on GTCC related activities.

F. *9:40–11 a.m.: Source Control—A State Perspective* (Open)—The Committee will be briefed by representatives from Illinois and Texas on the materials and radiation control programs in their states.

G. *11:15–12:30 p.m.: Source Control—NRC Activities* (Open)—The Committee will receive an oversight of the technical issues of the NRC program for the control of radioactive materials (e.g., NRC and licensee programs for source control, the General License Program, Orphan Sources, NMED, International activities, etc.)

H. *1:30–2:30 p.m.: Agreement State Programs* (Open)—The Director, Office of State and Tribal Programs (OSTP) will discuss the NRC Agreement State Oversight Program (Integrated Materials Performance Evaluation Program).

I. *2:30–3:30 p.m.: Materials/Waste Issues Related to Advanced Reactors* (Open)—The Committee will receive an information briefing by NRC staff representatives on materials and waste considerations associated with advanced reactors.

J. *3:45–6 p.m.: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics:

- GTCC/Source Control
- Long-Term Behavior of Waste Packages
- Igneous Activity Considerations
- High-Level Waste Performance Assessment Sensitivity Studies

Thursday, July 25, 2002

K. *8:30–8:35 a.m.: Opening Statement* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

L. *8:35–2:45 p.m.: Preparation of ACNW Reports* (Open)—The Committee will continue its discussion of proposed ACNW reports noted in Item K.

M. *2:45–3 p.m.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 3, 2001 (66 FR 50461). In accordance with these procedures, oral or written statements may be presented by members of the public; electronic recordings will be permitted only during those portions of the meeting that are open to the public; and questions may be asked by members of the Committee, its consultants, staff, and the public. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8 A.M. and 4 P.M. EDT, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or viewing on the internet at *http://www.nrc.gov/ACRSACNW*.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EDT, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: July 2, 2002.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–17116 Filed 7–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 8, 15, 22, 29, August 5, 12, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 8, 2002

Wednesday, July 10, 2002

9:25 a.m.

Affirmation Session (Public Meeting) (If needed).

9:30 a.m.

Briefing on License Renewal Program and Power Uprate Review Activities (Public Meeting) (Contacts: Noel Dudley, 301–415–1154, for license renewal program; Mohammed Shuaibi, 301–415–2859, for power uprate review activities).

This meeting will be webcast live at the Web address *www.nrc.gov.*

2 p.m.

Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address *www.nrc.gov.*

Week of July 15, 2002—Tentative

Thursday, July 18, 2002

1:55 p.m.

Affirmation Session (Public Meeting) (If needed).

Week of July 22, 2002—Tentative

There are no meetings scheduled for the Week of July 22, 2002.

Week of July 29, 2002—Tentative

There are no meetings scheduled for the Week of July 29, 2002.

Week of August 5, 2002—Tentative

There are no meetings scheduled for the Week of August 5, 2002.

Week of August 12, 2002—Tentative

Tuesday, August 13, 2002

9:30 a.m.

Briefing on Special Review Group Response to the Differing Professional Opinion/Differing Professional View (DPO/DPV) Review (Public Meeting) (Contact: John Craig, 301–415–1703).

This meeting will be webcast live at the Web address *www.nrc.gov.*

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555, (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: July 3, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–17288 Filed 7–5–02; 11:25 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 14, 2002 through June 27, 2002. The last biweekly notice was published on June 25, 2002 (67 FR 42814).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By July 25, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR

2.714,[1] which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov*.

[1] The most recent version of Title 10 of the CODE OF FEDERAL REGULATIONS, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: ''In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest .

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.''

Consumers Energy Company, Docket No. 50–155, Big Rock Point Nuclear Plant, Charlevoix, County, Michigan

Date of amendment request: June 11, 2002.

Description of amendment request: The amendment request changes the Defueled Technical Specifications by adding applicability statements to the requirements for storage and inspection of spent fuel and for the program requirements for spent fuel pool water chemistry.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested license amendment involves the addition of applicability statements to the program and activity requirements for the storage and inspection of spent fuel activities and requirements and the SFP [spent fuel pool] water chemistry. These applicability statements make requirements applicable whenever irradiated fuel is stored in the SFP. Once irradiated fuel has been completely removed from the SFP and transferred to a certified dry fuel storage container under a general 10 CFR Part 72 license, these program requirements for the SFP are no longer necessary. The program requirements consist of the specification, establishment, implementation, and maintenance of fuel configuration, fuel cooling, and water chemistry for the SFP to minimize the potential effects of decay heat and corrosion.

The corresponding program requirements for fuel storage in dry containers are specified in the container's certificate of conformance and safety analysis report. The corresponding program requirements currently include:

1. Analysis of fuel assemblies to determine maximum temperatures within the fuel assemblies to the temperature at the edge of the assemblies,

2. Design of passive heat removal components to remove heat via convection, conduction, and radiation, and

3. Specifications for canister vacuum drying pressure and helium backfill pressure that would ensure that a sufficiently inert environment is produced within the canister to inhibit corrosion.

The program requirements associated with fuel storage in the SFP do not contribute to accident prevention or mitigation following the complete removal of irradiated fuel. The corresponding program features for fuel storage in dry storage containers are specified and containers are specified and controlled under other applicable license documents. These changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any other accident previously evaluated.

The requested amendment involves the addition of applicability statements that will have the effect of making a program requirement associated with the SFP inapplicable when the SFP is no longer used for irradiated fuel storage. The corresponding program requirements are adequately specified in applicable license documents. The elimination of this program requirement following complete removal of irradiated fuel from the SFP does not result in any new or different accident initiators from those already assumed in accidents previously evaluated, nor does it exacerbate any such accidents. Therefore, these changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The safety margins produced as a result of the specification of program requirements for fuel storage in the SFP are adequately maintained in corresponding program requirements associated with fuel storage in dry storage containers. These corresponding program requirements are specified in the dry storage container's certificate of compliance and safety analysis report. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's significant hazards analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David A. Mikelonis, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Section Chief: Robert A. Gramm.

Dominion Nuclear Connecticut, Inc., et al., Docket Nos. 50–336 and 50–423, Millstone Nuclear Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of amendment request: May 13, 2002.

Description of amendment request: The proposed amendment modifies the Millstone Nuclear Power Station, Unit No. 2 (MP2) and Unit No. 3 (MP3) Technical Specifications (TSs) to change selected MP2 and MP3 radiological-related TSs. These changes are due to the revision to Part 20 of Title 10 of the Code of Federal Regulations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes do not have an impact on the acceptance criteria for any design-basis accident described in the respective MP2 or MP3 Updated Final Safety Analysis Report (UFSAR).

The changes have no impact on plant equipment operation. Since the changes are administrative or editorial in nature they cannot affect the likelihood or consequences of accidents. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The revisions to the Occupational Radiation Exposure Report, Radioactive Effluent Controls Program, and High Radiation Area Specifications in accordance with TSTF travelers 152, 258, and 308 will have no effect on plant operation. Since the proposed changes are solely administrative or editorial in nature, they do not affect plant operation in any way.

The proposed changes do not involve a physical alteration of the plant or change the plant configuration (no new or different type of equipment will be installed). The proposed changes do not require any new or unusual operator actions. The changes do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Since the proposed changes are solely administrative or editorial changes to the TSs, they do not affect plant operation in any way. The proposed changes to each unit's TSs will revise them to reflect the requirements of the current 10 CFR Part 20, standardize terminology, provide clearer guidance, clarify inconsistencies, remove extraneous information, and result in minor format changes that will not result in any technical changes to current requirements.

The proposed changes have no effect on any safety analyses assumptions and therefore do not impact any margins of safety. The proposed changes do not impact any acceptance criteria for the design-basis accidents described in the

respective MP2 or MP3 UFSAR and do not impact the consequences of accidents previously evaluated. Therefore, the proposed changes will not result in a reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, CT 06385.

NRC Section Chief: James W. Clifford.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina and Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: May 29, 2002.

Description of amendment request: The amendments would revise the Technical Specifications 5.5.2 to allow, on a one-time basis, extension of the interval governing the conduct of containment integrated leak rate test (ILRT) from ten to fifteen years. The amendments represent a one-time exception to the ten-year frequency of the performance-based Type A tests as delineated by Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program,'' September 1995. The amendments will allow conduct of each respective unit's ILRT within fifteen years from the last ILRT performed for each unit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following discussion is a summary of the evaluation of the changes contained in these proposed amendments against the 10 CFR 50.92(c) requirements to demonstrate that all three standards are satisfied. A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendments would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

First Standard

The proposed amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed extension to the Type A testing intervals cannot increase the probability of an accident previously evaluated since extension of the intervals is not a physical plant modification that could alter the probability of accident occurrence, nor is it an activity or modification by itself that could lead to equipment failure or accident initiation. The proposed extension to the Type A testing intervals does not result in a significant increase in the consequences of an accident as documented in NUREG–1493. The NUREG notes that very few potential containment leakage paths are not identified by Type B and Type C tests. It concludes that reducing the Type A testing frequency to once per twenty years leads to an imperceptible increase in risk.

Catawba and McGuire provide a high degree of assurance through testing and inspection that the containments will not degrade in a manner detectable only by Type A testing. Recent Type A tests for the Catawba and McGuire units identified containment leakage within acceptance criteria, indicating a very leak tight containment. Inspections required by the ASME Code are also performed in order to identify indications of containment degradation that could affect leak tightness. Separately, Type B and Type C testing, required by TS [Technical Specifications], identify any containment opening from design penetrations, such as valves, that would otherwise be detected by a Type A test. These factors establish that an extension to the Type A test intervals will not represent a significant increase in the consequences of an accident.

Second Standard

The proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed revisions to the Catawba and McGuire TS add a one-time extension to the current interval for Type A testing. The current test interval of ten years, based on past performance, would be extended on a one-time basis to fifteen years from the last Type A test. The proposed extension to Type A test intervals does not create the possibility of a new or different type of accident since there are no physical changes being made to the plants and there are no changes to the operation of the plants that could introduce a new failure mode.

Third Standard

The proposed amendments will not involve a significant reduction in a margin of safety. The proposed revisions to the Catawba and McGuire TS add a one-time extension to the current interval for Type A testing. The current test interval of ten years, based on past performance, would be extended on a one-time basis to fifteen years from the last Type A test. The proposed extension to Type A test intervals will not significantly reduce the margin of safety. The NUREG–1493 generic study of the effects of extending containment leakage testing intervals found that a twenty-year interval resulted in an imperceptable increase in risk to the public. NUREG–1493 found that, generically, the design containment leakage rate contributes about 0.1 percent of the overall risk and that decreasing the Type A testing frequency would have a minimal effect on this risk, since 95 percent of the Type A detectable leakage paths would already be detected by Type B and Type C testing. Similar proposed changes have been previously reviewed and approved by the NRC, and they are applicable to Catawba and McGuire.

Based upon the preceding discussion, Duke Energy Corporation has concluded that the proposed amendments do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn , Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 14, 2002.

Description of amendment request: The proposed change will revise Appendix 3B and Section 6.2.1.2 of the Updated Safety Analysis Report pertaining to the method of analysis. The proposed change will replace the current vendor THREED code for room pressure-temperature analyses due to High Energy Line Breaks (HELB) with GOTHIC (Generation of Thermal-Hydraulic Information for Containments). The proposed change will allow Entergy Operations, Inc. (EOI) to update the analysis and to evaluate additional changes to the plant.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the operation of the facility in accordance with these proposed changes involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: The proposed change involves no increase in the probability of the accidents previously evaluated since no physical change to the plant will be made. The change of the High Energy Line Break (HELB) analysis method does not affect the probability of the analyzed event occurring.

The line break locations have not been affected and remain as originally designed.

This submittal is required due to the change of HELB analysis code from the vendor code THREED to the modern industry standard analysis code GOTHIC. This is a change in the methodology for determining the effects of the mass and energy release in the plant as a result of currently postulated events. The change in the evaluation methodology has been benchmarked and reviewed to confirm the results remain consistent with the current analysis. The changes to the model used for the additional analysis allow the use of new, more physically realistic models for Containment and Auxiliary Building pressure/temperature responses and will demonstrate continued qualification of the equipment in these buildings. Mass and energy releases for some cases have also been recalculated to credit pipe friction, which was only credited for certain cases previously.

With these new results the equipment has been reviewed and remains qualified per current programs established at RBS [River Bend Station]. Therefore, the plant will continue to function as designed and thus there will be no impact on consequences.

2. Will the operation of the facility in accordance with these proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No physical change to the plant will be made. The HELB locations were identified by reviewing all the possible break locations in each Auxiliary and Containment Building volume containing high-energy lines. The locations of the breaks remain the same as the previous HELB analyses. The HELB analyses have been evaluated for the current plant configuration. The new HELB analysis has been benchmarked against the previous accepted methods and found to correlate with the previous analysis. Therefore the results can be used to predict plant responses to events. The proposed change uses improved methods for mass and energy release calculation and pressure / temperature responses to determine the EQ [equipment qualification] qualification envelopes. Therefore, no new or different interaction would be created.

3. Will the operation of the facility in accordance with these proposed changes involve a significant reduction in a margin of safety?

Response: The operation of the facility in accordance with the proposed changes will not involve a significant reduction in a margin of safety.

The GOTHIC code has been successfully benchmarked versus the vendor THREED code, which was used in the original design calculations. The HELB analysis results with the benchmarking GOTHIC model are consistent with the THREED results. Therefore, the use of GOTHIC code will not involve a reduction in an identified margin of safety. Given that GOTHIC code is an improved methodology and it has been extensively qualified against the solved analytical problems and testing results, the use of GOTHIC code will produce more accurate pressure/temperature responses for the HELB analyses. The use of the GOTHIC code has been approved for pressure/temperature responses analysis at various other plants including Joseph M. Farley Nuclear Plant, Units 1 and 2, and Waterford [Steam Electric Station, Unit] 3.

The results with the revised methods will be used to show that safety equipment meets the EQ requirements. The peak temperatures and pressures in the HELB GOTHIC benchmark model are within the existing EDC [environmental design criteria] envelopes. Therefore, the pressure/temperature responses from the HELB benchmark analyses have no impact on the equipment qualification.

The methodology in the original design calculations is very conservative. The mass and energy releases without crediting friction introduce excessive amount of high-energy fluid into the break rooms, which is unrealistic. Some HELB calculations have credited both the frictional flows and the additional zone to eliminate excessive conservatism in the pressure/temperature responses. There is no reduction in a margin of safety and the design room differential pressure limits continue to be [met].

The use of this method by EOI RBS is consistent with the guidance given in NRC [U.S. Nuclear Regulatory Commission] Generic Letter 83–11 and Supplement 1, addressing the performance of safety analyses by licensees. EOI has implemented this guidance for the GOTHIC methodology consistent with the intended application. The GOTHIC methodology has been verified and validated by the software vendor. In addition, this methodology is controlled by EOI procedures and under the EOI quality assurance program. This includes EOI and RBS specific verification and validation of this application of GOTHIC and review of the calculations performed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Nuclear Operations, Inc. (ENO), Docket No. 50–003, Indian Point Nuclear Generating Station, Unit 1, Buchanan, New York

Date of application for amendment: May 30, 2002.

Description of amendment request: The proposed changes will modify the Indian Point Generating Station, Unit 1 (IP1), Technical Specifications (TSs) and Provisional Operating License No. DPR–5. IP1 is completely enclosed within the protected area for Indian Point Nuclear Generating Station, Unit 2 (IP2). IP1 depends on the IP2 TSs and processes for the implementation of certain regulatory requirements. The requested changes will simplify the IP1 TSs to facilitate the IP2 transition to the Improved TSs. The IP1 TSs will be reformatted, reordered and repaginated for consistency and clarity. ENO also proposes that certain changes supersede requirements of the ''Order Approving Decommissioning Plan and Authorizing Decommissioning of Facility'' [2] (the Order) to ensure compliance with the current requirements of 10 CFR Part 50.59, ''Changes, tests, and experiments.'' and 10 CFR Part 50.82, ''Termination of license,'' for evaluating whether changes can be made to IP1 without NRC approval.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or in the consequences of an accident previously evaluated?

The NSB [Nuclear Services Building] sewage effluent line radiation monitor is not required to function to mitigate any postulated accident. The design or operation of the radiation monitor on the existing sewage effluent discharge line will not be changed by deleting operability and surveillance requirements for the NSB sewage effluent radiation monitor from the IP1 TS. The nuclear services building sewage effluent line is neither an accident initiator nor mitigator.

The other proposed changes do not result in a change to the design or operation of any plant structure, system or component. Therefore any assumptions of the operability or performance of any structure, system or component in accident evaluations are unchanged.

The proposed fire protection TS 2.11 involves deleting requirements from the IP1 TS that are solely applicable to IP2. Any assumptions of the operability or performance of any structure, system or component in IP2 accident evaluations, including the Fire Plan, are unchanged. Therefore, there is no increase in the probability or in the consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed TS change involves the deletion of operability and surveillance requirements for radioactive effluent monitoring of the NSB sewage effluent from the IP1 TS. The proposed TS changes do not

[2] U.S. Nuclear Regulatory Commission (NRC) letter to Consolidated Edison, ''Order to Authorize Decommissioning and Amendment No. 45 to License No. DPR–5 for Indian Point Unit 1 (TAC No. M59664),'' dated January 31, 1996.

affect the design or operation of any plant structure, system, or component.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

This change to TS 1.0 does not affect a design function for or the operation of any plant structure, system, or component. The change does not affect the method of ENO's compliance with any regulation.

The proposed TS change involving IP1 TS 2.11 statement governs the protection of IP2 safe shutdown systems from fire. Effective protection of IP2 safe shutdown systems from fire is mandated by IP2 License Condition 2.K. The effectiveness of ENO compliance with IP2 License Condition 2.K is not affected by this change. In addition, this change does not affect a design function or the operation of any plant structure, system, or component.

The proposed changes to TS sections 3.1 and 3.2 involve eliminating the duplication of requirements in the IP1 TS and incorporating the requirements by reference to the IP2 TS. A single ENO organization operates both IP1 and IP2. The effective organizational requirements to ensure compliance with all ENO IP1 and IP2 site requirements are mandated by the IP2 TS. The effectiveness of ENO's safety management of the Indian Point site is not affected by this change. In addition, this change does not affect a design function or the operation of any plant structure, system, or component.

The proposed TS change to sections 4.1 and 5.2 involves eliminating the reference in the IP1 TS to the specific applicable section number of the IP2 TS. A single organization operates both IP1 and IP2. The applicable IP2 TS is obvious by the activity title. The effectiveness of ENO's safety management of the Indian Point site is not affected by this change. In addition, this change does not affect a design function or the operation of any plant structure, system, or component.

Effective compliance with the 10CFR20 requirements for radiation protection and monitoring radioactive effluent releases is mandated by other IP1 and IP2 TS and license provisions. The effectiveness of ENO compliance with 10CFR20 requirements is not adversely affected by the elimination of TS requirements for the radiation protection plan and radioactive effluent monitoring on the nuclear services building sewage effluent line.

The proposed TS change involves requirements for the site Meteorological Monitoring and Radiological Environmental Monitoring programs. However, IP2 TS provisions mandate effective compliance for meteorological and radiological environmental monitoring. The effectiveness of ENO compliance with 10CFR50.47, 10CFR100, and 10CFR20 requirements is not adversely affected by this change. In addition, this change does not affect a design function or the operation of any plant structure, system, or component. IP2 TS provisions mandate effective compliance with requirements for radiation protection. The effectiveness of ENO's compliance with 10 CFR 20 is not adversely affected by this change or the change to the section for sealed sources. In addition, this change does not affect a design function or the operation of any plant structure, system, or component.

The proposed TS change involves the location of routine and event reporting requirements. However, other IP2 TS provisions mandate effective compliance with reporting requirements. In addition, this change does not affect a design function or the operation of any plant structure, system, or component.

The effectiveness of ENO's compliance with 10CFR50.59 is not adversely affected by the clarification and relocation of the applicability of the FSAR [Final Safety Analysis Report]. In addition, this change does not affect a design function or the operation of any plant structure, system, or component.

Therefore, the change does not result in a change to any of the safety analyses or any margin of safety.

ENO also requests that the expiration date of IP1 Provisional Operating License No. DPR–5 be changed from ''midnight, October 14, 2002,'' to ''midnight, September 28, 2013,'' the current expiration date for Facility Operating License No. DPR–26 for IP2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or in the consequences of an accident previously evaluated?

In its Safety Evaluation and Environmental Assessment for its January 31, 1996, Order Approving Decommissioning Plan and Authorizing Decommissioning of Facility, the NRC evaluated the acceptability of the possession-only license and safety issues related to SAFSTOR of Indian Point Nuclear Generating Unit No. 1 until September 28, 2013. The requested change does not involve any activity that could change the assumptions of the prior Safety Evaluation and Environmental Assessment.

Therefore, the proposed license amendment does not involve a significant increase in the probability or in the consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

In its Safety Evaluation and Environmental Assessment for its January 31, 1996, Order Approving Decommissioning Plan and Authorizing Decommissioning of Facility, the NRC evaluated the acceptability of the possession-only license and safety issues related to SAFSTOR of Indian Point Nuclear Generating Unit No. 1 until September 28, 2013. The requested change does not involve any activity that could change the assumptions of the prior Safety Evaluation and Environmental Assessment.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

In its Safety Evaluation and Environmental Assessment for its January 31, 1996, Order Approving Decommissioning Plan and Authorizing Decommissioning of Facility, the NRC evaluated the acceptability of the possession-only license and safety issues related to SAFSTOR of Indian Point Nuclear Generating Unit No. 1 until September 28, 2013. The requested change does not involve any activity that could change the assumptions of the prior Safety Evaluation and Environmental Assessment.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analyses and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mr. John Fulton, Assistant General Consul, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Robert A. Gramm.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: May 30, 2002.

Description of amendment request: The proposed amendment would revise the Facility Operating License and Technical Specifications (TSs) to increase the licensed core thermal power level to 3067.4 megawatts (MWt), which is a 1.4% increase above the currently authorized power level of 3025 MWt. The proposed power uprate involves the improvement in the core power uncertainty allowance originally required for the emergency core cooling system (ECCS) evaluations performed in accordance with Appendix K, ''ECCS Evaluation Models,'' to Part 50 of Title 10 of the Code of Federal Regulations. In addition, changes would be made in TS Sections 2.2, 3.3, 3.4, 3.7, and the applicable TS Bases would be revised to account for the change in power level.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The evaluations associated with this proposed change to core power level have demonstrated that all applicable acceptance criteria for plant systems, components, and analyses (including the Final Safety Analysis Report Chapter 14 safety analyses) will continue to be met for the proposed 1.4% increase in licensed core thermal power for IP3 [Indian Point Unit 3]. The subject increase in core thermal power will not result in conditions that could adversely affect the integrity (material, design, and construction standards) or the operational performance of any potentially affected system, component or analysis. Therefore, the probability of an accident previously evaluated is not affected by this change. The subject increase in core thermal power will not adversely affect the ability of any safety-related system to meet its intended safety function. Further, the radiological dose evaluations in support of this power uprate effort show that the current FSAR [Final Safety Analysis Report] Chapter 14 radiological analyses are unaffected, and that the current dose analyses of record bound plant operation with the subject increase in licensed core thermal power level.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The evaluations of this proposed amendment show that all applicable acceptance criteria for plant systems, components, and analyses (including FSAR Chapter 14 safety analyses) will continue to be met for the proposed 1.4% power increase in IP3 licensed core thermal power. The subject increase in core thermal power will not result in conditions that could adversely affect the integrity (material, design, and construction standards) or operational performance of any potentially affected system, component, or analyses. The subject increase in core thermal power will not adversely affect the ability of any safety-related system to meet its safety function. Furthermore, the conditions associated with the subject increase in core thermal power will neither cause initiation of any accident, nor create any new credible limiting single failure. The power uprate does not result in changing the status of events previously deemed to be non-credible being made credible. Additionally, no new operating modes are proposed for the plant as a result of this requested change.

Therefore, the subject increase in core thermal power level will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The evaluations associated with this proposed change show that all applicable acceptance criteria for plant systems, components, and analyses (including FSAR Chapter 14 safety analyses) will continue to be met for this proposed 1.4% increase in IP3 licensed core thermal power. The subject increase in core thermal power will not result in conditions that could adversely affect the integrity (material, design, and construction standards) or operational performance of any potentially affected system, component, or analysis. The subject power uprate will not adversely affect the ability of any safety-related system to meet its intended safety function. For example, most IP3 analyses already add a 2% uncertainty allowance to the nominal power level to account solely for power measurement uncertainty. These analyses have not been revised for the 1.4% uprate power level conditions because the sum of increased core power level (1.4%) and the improved power measurement accuracy (uncertainty less than 0.6%) is already bounded by the currently analyzed 2% uncertainty allowance.

Therefore, the subject increase in core thermal power will not involve a reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: June 3, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.4.9, ''Pressurizer,'' to increase the pressurizer water level limit when the plant is in Mode 3 (Hot Standby). The current pressurizer water level limit is applicable for Modes 1, 2, and 3, and will remain unchanged for Modes 1 and 2. The proposed amendment would also revise TS 3.8.4, ''DC Sources—Operating,'' to remove the notes that refer to the one-time amendment allowing the online replacement of station batteries 31 and 32. The notes are no longer applicable since the batteries have been replaced.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Pressurizer water level is an assumed initial condition for certain accident analyses. Plant initial conditions are not accident initiators and do not have an effect on the probability of the accident occurring. The proposed change only revises the specified limit on water level in the pressurizer, so that this change would not affect accident probability.

The specific accidents for which pressurizer water level is an assumed initial condition are a loss of load and a loss of normal feedwater. The limiting accident analysis results occur at full power conditions when the available core thermal power is maximized. The proposed change does not affect the specified pressurizer level limit at any power level from zero to full power. That is, the pressurizer level limit is not being changed in Modes 1 and 2. The proposed change does revise the specified pressurizer water level limit in Mode 3 (Hot Standby) but this does not affect accident analysis results because the limiting analyses will remain those that are postulated to occur in Mode 1 with the plant at full power.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve physical changes to existing plant equipment or the installation of any new equipment. The design of the pressurizer, the pressurizer level control system and the pressurizer safety valves is not being changed and the ability of these systems, structures, and components to perform their design or safety functions is not being affected. The proposed change revises the specified limit on pressurizer water level in Mode 3 (Hot Standby) to allow operators greater flexibility in performing a plant cooldown. The method used in performing the plant cooldown is not being changed. This proposed change does not create new failure modes or malfunctions of plant equipment nor is there a new credible failure mechanism.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Pressurizer level is an initial condition assumed in certain accident analyses involving an insurge in the pressurizer and an increasing reactor coolant system (RCS) pressure. These analyses demonstrate that the design pressure for the RCS is not exceeded for the limiting analyses based on the plant at full power. The proposed change does not affect the existing Technical

Specification requirement for Mode 1 (Power Operation) or Mode 2 (Plant Startup) and therefore does not affect the assumptions or results of these accident analyses. The margin for RCS design pressure demonstrated by these analysis results is not being reduced. The proposed change only applies to the pressurizer level limit in Mode 3 (Hot Standby) when there is substantially lower thermal energy available to cause rapid expansion of reactor coolant and an insurge to the pressurizer. Protection of the RCS pressure boundary is still maintained by the pressurizer safety valves, which are not being modified by the proposed change in pressurizer water level.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: June 5, 2002.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to implement the alternate source term methodology for the fuel-handling accident analysis. Specifically, the proposed amendment would revise TS 3.9.3, ''Containment Penetrations,'' to: (1) Permit the equipment hatch opening and the personnel air lock doors to be capable of being closed during movement of irradiated fuel, (2) allow use of administrative controls for unisolating containment penetrations during movement of irradiated fuel, (3) delete the containment purge and containment pressure relief requirements and associated surveillances with the reactor subcritical for less than 550 hours, and (4) eliminate the TS applicability ''during core alterations.'' In this regard, the proposed amendment would adopt TS Task Force (TSTF) Standard TS Change Travelers TSTF–68, ''Containment Personnel Airlock Doors Open During Fuel Movement,'' TSTF–312, ''Administratively Control Containment Penetrations,'' and, in part, TSTF–51, ''Revise Containment Requirements During Handling Irradiated Fuel and Core Alterations.'' The proposed amendment would also relocate the requirements in TS 3.7.13, ''Fuel Storage Building Emergency Ventilation System,'' and TS 3.3.8, ''Fuel Storage Building Emergency Ventilation System Actuation Instrumentation,'' to the licensee-controlled Technical Requirements Manual.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change involves the reanalysis of a fuel handing accident (FHA) in containment and in the fuel storage building. The new analysis, based on the Alternate Source Term (AST) in accordance with 10 CFR [Code of Federal Regulations] 50.67, will replace the existing analysis based on methodologies and acceptance criteria in place when Indian Point 3 was originally licensed. As a result of the new analysis, changes to the Technical Specifications are proposed which take credit for the new analysis results.

The proposed changes to the technical specifications modify requirements regarding containment closure during movement of irradiated fuel assemblies in containment and relocate requirements for the fuel storage building emergency ventilation system from the technical specifications to a licensee controlled document. The proposed changes do not involve physical modifications to plant equipment and do not change the operational methods or procedures used for moving irradiated fuel assemblies. As such, there are no accident initiators affected by the proposed amendment. The revised requirements apply only when the plant is in a refueling condition (Mode 6), and specifically only when irradiated fuel is being moved. Previously evaluated accidents with the plant in other conditions ranging from cold shutdown (Mode 5) through power operation (Mode 1) are not affected. The AST methodology is used to evaluate a[n] FHA that is postulated to occur during fuel movement activities in the containment building and the fuel storage building. The analysis follows the guidance of the NRC Regulatory Guide 1.183 and uses the acceptance criteria of the NRC Standard Review Plan (NUREG 0800) for offsite doses and General Design Criteria 19 for control room personnel. The analysis demonstrates that the dose consequences meet regulatory acceptance criteria. The accident analysis conservatively assumes that the containment building and the fuel storage building, including ventilation filtration systems for those building[s] does not diminish or delay the assumed fission product release. The analysis does take credit for, and technical specifications enforce, the presence of 23 feet of water over the irradiated fuel while fuel movement activities are being performed. The analysis also takes credit for, and the technical specification bases enforce a fuel decay time of at least 84 hours. In addition, administrative controls are put in place to provide for closure of containment openings in the event of a[n] FHA. Use of an alternate analysis method does not affect fuel parameters or the equipment used to handle the fuel. The proposed changes to the technical specifications reflect assumptions made in the analysis.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment involves the use of an alternate analysis methodology for the evaluation of the dose consequences from a[n] FHA that is postulated to occur in either the containment building or the fuel storage building (FSB). The analysis demonstrates that containment closure conditions and operation of the containment purge filtration system are not required to maintain dose consequence within regulatory limits following a postulated FHA in containment. Therefore the new analysis supports proposed changes to requirements for containment closure during movement of irradiated fuel assemblies in containment. The analysis results also demonstrate that operation of the fuel storage building emergency ventilation system is not required to maintain dose consequences within regulatory limits following a postulated FHA in the FSB. The containment closure components (e.g., equipment hatch, personnel airlock doors, and various containment penetrations) and filtration systems are not accident initiators. The proposed changes do not involve the addition of new systems or components nor do they involve the modification of existing plant systems. The proposed changes do not affect the way in which a[n] FHA is postulated to occur.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The existing dose analysis methodology and assumptions demonstrates that the dose consequences of a[n] FHA are within regulatory limits for whole body and thyroid doses as established in 10 CFR 100. The alternate dose analysis methodology and assumptions also demonstrates that the dose consequences of a[n] FHA are within regulatory limits. The limits applicable to the alternate analysis are established in 10 CFR 50.67 in conjunction with the TEDE (total effective dose equivalent) acceptance directed in Regulatory Guide 1.183. The acceptance criteria for both dose analysis methods have been developed for the

purpose of evaluating design basis accidents to demonstrate adequate protection of public health and safety. An acceptable margin of safety is inherent in both types of acceptance criteria.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: June 7, 2002.

Description of amendment request: The proposed amendment would change the requirements associated with handling irradiated fuel and performing core alterations. Specifically, the changes would eliminate operability requirements for secondary containment when handling recently irradiated fuel and during core alterations. The amendment would also revise the requirements associated with equipment whose performance is not credited in the new calculations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: No.

The proposed TS [Technical Specifications] changes do not modify the design or operation of equipment used to move spent fuel or to perform core alterations. Because the equipment affected by the change is not an initiator to any previously analyzed accident, the proposed change cannot increase the probability of any previously analyzed accident.

The conservative re-analysis of the fuel handling accident concludes that radiological consequences are within the acceptance criteria in Regulatory Guide 1.183 and 10 CFR 50.67. The results of the core alteration events, other than the fuel handling accident, remain unchanged from the original design-basis, which showed that these events do not result in fuel cladding damage or radioactive release. The radiological analysis uses the same FHA [fuel handling accident] source activity previously accepted in the design-basis FHA analysis. The same source activity is used with the guidance in the Regulatory Guide 1.183, Appendix B and the passive release/transport path, which does not take the dose mitigation credit of engineered safeguards including secondary containment and CREVAS [Control Room Emergency Ventilation] Systems.

Therefore, this proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed.

2. Does not create the possibility of a new or different kind of accident from any accident previously analyzed?

Response: No.

The proposed post-FHA activity transport path is passive in nature and it does not take the credit of dose mitigation functions previously credited in the design-basis FHA analysis. The proposed changes do not introduce any new modes of plant operation and do not involve physical modifications to the plant.

Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Does not involve a significant reduction in [a] margin of safety?

Response: No.

The proposed changes revise the FitzPatrick TS to establish operational conditions where specific activities represent situations during which significant radioactive releases can be postulated. These new operational conditions are consistent with the proposed design-basis accident analysis and are established such that the radiological consequences are less than the regulatory allowable limits. Safety margins and analytical conservatisms are retained to ensure that the analysis adequately bounds all postulated event scenarios. The selected assumptions and release models provide an appropriate and prudent safety margin against unpredicted events in the course of an accident and compensates for large uncertainties in facility parameters, accident progression, radioactive material transport and atmospheric dispersion. The proposed TS applicability statements continue to ensure that the TEDE [Total Effective Dose Equivalent] at the control room and the exclusion area and low population zone boundaries are below the corresponding regulatory allowable limits in 10 CFR 50.67(b)(2).

Therefore, these changes do not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: Richard J. Laufer.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania

Date of application for amendments: May 24, 2002.

Description of amendment request: Exelon Generation Company, LLC, the licensee, is proposing changes to the Peach Bottom Atomic Power Station, Units 2 and 3 (PBAPS), Operating Licenses and Technical Specifications associated with an increase in the licensed power level. The changes involve a proposed 1.62 percent increase in the licensed reactor core thermal power level (an increase in reactor power level from 3,458 megawatts thermal to 3,514 megawatts thermal). These changes result from increased accuracy of the feedwater flow and temperature measurements to be achieved by utilizing high accuracy ultrasonic flow measurement instrumentation. This results in a more accurate determination of reactor core thermal power level. The basis for this change is consistent with the revision, issued in June 2000, to Appendix K to Part 50 of Title 10 of the Code of Federal Regulations, allowing operating reactor licensees to use an uncertainty factor of less than 2 percent of rated reactor thermal power in analyses of postulated design-basis loss-of-coolant accidents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The comprehensive analytical efforts performed to support the proposed uprate conditions included a review and evaluation of all components and systems that could be affected by this change. Evaluation of accident analyses confirmed the effects of the proposed uprate are bounded by the current dose analyses. All systems will function as designed, and all performance requirements for these systems have been evaluated and found acceptable.

The primary loop components (reactor vessel, reactor internals, control rod drive housings, piping and supports, recirculation pumps, etc.) continue to comply with their applicable structural limits and will continue to perform their intended design functions. Thus, there is no increase in the probability of a structural failure of these components.

All of the [Nuclear Steam Supply System] NSSS systems will still perform their intended design functions during normal and accident conditions. The balance of plant [(BOP)] systems and components continue to

meet their applicable structural limits and will continue to perform their intended design functions. Thus, there is no increase in the probability of a structural failure of these components. All of the NSSS/BOP interface systems will continue to perform their intended design functions. The safety relief valves and containment isolation valves meet design sizing requirements at the uprated power level.

Because the integrity of the plant will not be affected by operation at the uprated condition, it is concluded that all structures, systems, and components required to mitigate a transient remain capable of fulfilling their intended functions. The reduced uncertainty in the flow input to the core thermal power uncertainty measurement allows most of the current safety analyses to be used, with small changes to the core operating limits, to support operation at a core power of 3514 megawatts thermal (MWt). Other analyses performed at a nominal power level have either been evaluated or re-performed for the 1.62% increased power level. The results demonstrate that the applicable analysis acceptance criteria continue to be met at the 1.62% uprate conditions. As such, all PBAPS Updated Final Safety Analysis Report (UFSAR) Chapter 14 accident analyses continue to demonstrate compliance with the relevant event acceptance criteria. Those analyses performed to assess the effects of mass and energy releases remain valid. The source terms used to assess radiological consequences have been reviewed and determined to bound operation at the 1.62% uprated condition.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety related system.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. Operation at the uprated power condition does not involve a significant reduction in a margin of safety. Analyses of the primary fission product barriers have concluded that all relevant design criteria remain satisfied, both from the standpoint of the integrity of the primary fission product barrier and from the standpoint of compliance with the required acceptance criteria. As appropriate, all evaluations have been performed using methods that have either been reviewed and approved by the NRC, or that are in compliance with regulatory review guidance and standards.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mr. Edward Cullen, Vice President and General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Clifford.

Exelon Generation Company, LLC, Docket No. 50–254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of amendment request: May 30, 2002.

Description of amendment request: The proposed change revises the safety limit minimum critical power ratio for Unit 1 Cycle 18 for two loop operation and single loop operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established consistent with NRC approved methods to ensure that fuel performance during normal, transient, and accident conditions is acceptable. The proposed change conservatively establishes the safety limit for the minimum critical power ratio (SLMCPR) for Quad Cities Nuclear Power Station (QCNPS), Unit 1, Cycle 18 such that the fuel is protected during normal operation and during any plant transients or anticipated operational occurrences.

Changing the SLMCPR does not increase the probability of an evaluated accident. The change does not require any physical plant modifications, physically affect any plant components, or entail changes in plant operation. Therefore, no individual precursors of an accident are affected.

The proposed change revises the SLMCPR to protect the fuel during normal operation as well as during any transients or anticipated operational occurrences. Operational limits will be established based on the proposed SLMCPR to ensure that the SLMCPR is not violated during all modes of operation. This will ensure that the fuel design safety criteria (i.e., that at least 99.9% of the fuel rods do not experience transition boiling during normal operation and anticipated operational occurrences) is met. Since the operability of plant systems designed to mitigate any consequences of accidents has not changed, the consequences of an accident previously evaluated are not expected to increase.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated? Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in allowable modes of operation. The proposed change does not involve any modifications of the plant configuration or allowable modes of operation. The proposed change to the SLMCPR assures that safety criteria are maintained for QCNPS, Unit 1, Cycle 18.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Does the proposed change involve a significant reduction in a margin of safety?

The value of the proposed SLMCPR provides a margin of safety by ensuring that no more than 0.1% of the rods are expected to be in boiling transition if the MCPR limit is not violated. The proposed change will ensure the appropriate level of fuel protection. Additionally, operational limits will be established based on the proposed SLMCPR to ensure that the SLMCPR is not violated during all modes of operation.

This will ensure that the fuel design safety criteria (i.e., that at least 99.9% of the fuel rods do not experience transition boiling during normal operation as well as anticipated operational occurrences) are met.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: June 13, 2002.

Description of amendment request: The amendment would revise the Improved Technical Specifications (ITS) 3.3.8 and associated bases, ''Emergency Diesel Generator (EDG) Loss of Power Start (LOPS),'' by changing the completion time for required action D.2 from 12 to 36 hours. The amendment also corrects a typographical error in ITS 3.3.8 and clarifies the discussion in Bases Section B 3.3.8 for Actions D.1 and D.2 to recognize the applicability of ITS 3.3.8 in MODES 5 and 6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does not involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed license amendment revises the Required Time to place the plant in MODE 5 if an inoperable loss of voltage Function for the emergency diesel generator (EDG) loss of power start (LOPS) cannot be restored to OPERABLE status, corrects a typographical error in the Section Number of ITS 3.3.8, and clarifies the wording of ITS Bases Section B 3.3.8 for Action D.1 and D.2 regarding the applicability of the specification during MODES 5 and 6.

The EDG LOPS is intended to protect engineered safeguards equipment from damage due to sustained undervoltage conditions, and to ensure rapid restoration of power to the engineered safeguards electrical buses in the event of a loss of offsite power. The EDG LOPS is not an initiator of any design basis accident. The design functions of the EDG LOPS and the initial conditions for accidents that require an EDG LOPS will not be affected by the change. Therefore, the change will not increase the probability or consequences of an accident previously evaluated.

(2) Does not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed amendment involves no changes to the design functions or operation of the EDG LOPS. Editorial corrections, clarification of the wording in Bases Section B 3.3.8, or changing the Required Completion Time for placing the plant in MODE 5 when an inoperable loss of voltage function cannot be restored will not introduce any new failure mechanisms, malfunctions or accident initiators. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does not involve a significant reduction in the margin of safety.

The proposed change corrects a typographical error, clarifies the wording of Bases Section B 3.3.8 for Actions D.1 and D.2, and revises the required Completion Time to place the plant in MODE 5. The revised Completion Time will allow the plant to be shutdown in an orderly fashion without challenging plant systems or plant cooldown limits. The proposed change does not change the design or operation of the EDG LOPS, and does not impact the ability of the EDG LOPS to perform its design functions. Thus, the proposed amendment will not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, Associate General Counsel (MAC–BT15A), Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Acting Section Chief: Kahtan N. Jabbour.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: June 7, 2002.

Description of amendment request: The proposed amendments would delete requirements from the Technical Specifications (TSs) (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate. However, lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means, or is of little use in the assessment and mitigation of accident conditions.

The Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on December 27, 2001 (66 FR 66949) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 20, 2002 (67 FR 13027). The licensee affirmed the applicability of the NSHC determination in its application dated June 7, 2002. The NSHC determination is restated below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the

consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in [a] margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: May 29, 2002.

Description of amendment request: The proposed amendment would revise TS 3.8.1, ''AC Sources—Operating,'' to allow portions of Surveillance Requirement (SR) 3.8.1.5 to be performed with the units in Mode 1, 2, 3 or 4. This proposed amendment is consistent with changes made to NUREG–1431, Standard Technical Specifications, Westinghouse Plants, by Technical Specification Task Force (TSTF) Traveler, TSTF–283, Revision 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The standby emergency power sources are primarily a support system for systems required to be operable for accident mitigation. SR 3.8.1.5 demonstrates the standby emergency power source operation, during a loss of offsite power actuation test signal in conjunction with an Engineering Safeguards Feature (ESF) actuation signal. The proposed amendment only changes the allowed operating Modes in which portions of this surveillance may be performed. Performing portions of the surveillance in Mode 1, 2, 3, or 4 will require an assessment to determine that plant safety is maintained or will be enhanced.

Therefore, the consequences of an accident previously evaluated will not be significantly increased as a result of the proposed change.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

The possibility for a new or different type of accident from any accident previously evaluated is not created as a result of this amendment. These changes do not introduce any new or different normal operation or accident initiators. Performing the surveillance in Mode 1, 2, 3, or 4 will require an assessment to determine that plant safety is maintained or will be enhanced.

Equipment important to safety will continue to operate as designed. The changes do not result in any event previously deemed incredible being made credible. The changes do not result in more adverse conditions or result in any increase in the challenges to safety systems. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendment will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

The standby emergency power sources are primarily a support system for systems required to be operable for accident mitigation. SR 3.8.1.5 demonstrates the standby emergency power source operation, during a loss of offsite power actuation test signal in conjunction with an ESF actuation signal. Performing the surveillance in Mode 1, 2, 3, or 4 will require an assessment to determine that plant safety is maintained or will be enhanced. There are no new or significant changes to the initial conditions contributing to accident severity or consequences. The proposed amendment will not otherwise affect the plant protective boundaries, will not cause a release of fission products to the public, nor will it degrade the performance of any other structures, systems or components (SSCs) important to safety. Therefore, allowing a portion of the surveillance to be performed in Mode 1, 2, 3, or 4, will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 22, 2002.

Description of amendment request: The proposed amendment revises Technical Specifications (TSs) 3/4.3.5, allowing the automatic operation of the atmospheric steam relief valves during Mode 2 to maintain secondary side pressure at or below an indicated steam generator pressure of 1225 psig during startup and shutdown of the reactors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change only provides another method of controlling the SG PORVs [steam generator power-operated relief valves] under specified operating conditions. The operating conditions in Specification 3/4.3.5 remain unchanged. No change is required to plant design since the proposed method of control is already part of the plant's configuration. The proposed method of control is the same method of control

normally required by the specification in Modes 1 and 2. The proposed method of control will not impact the accident analysis assumptions or results. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed method of controlling the SG PORVs is the same method that these valves are controlled in Modes 1 and 2 by the specification under normal conditions. The proposed change will allow the setpoint of these valves to be adjusted to support startup and shutdown activities. The adjustment of the setpoint is restricted so that the accident analysis is not impacted. No change to the design of the valves or plant configuration is required to implement the proposed change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change that will allow for an additional method of controlling the SG PORVs during startup and shutdown activities is consistent with the operating restrictions for the current method of valve control. The accident analysis assumptions and results will remain unaffected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis, & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 23, 2002.

Description of amendment request: The proposed amendment revises the near-end of life (EOL) Moderator Temperature Coefficient (MTC) Surveillance Requirements by placing a set of conditions on core operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The probability or consequences of accidents previously evaluated in the UFSAR [updated final safety analysis report] are unaffected by this proposed change because there is no change to any equipment response or accident mitigation scenario. There are no additional challenges to fission product barrier integrity. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The proposed change does not challenge the performance or integrity of any safety-related system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety associated with the acceptance criteria of any accident is unchanged. The proposed change will have no affect on the availability, operability, or performance of the safety-related systems and components. A change to a surveillance requirement is proposed, but the limiting conditions for operation required by the Technical Specifications are not changed.

The Technical Specifications Bases are founded in part on the ability of the regulatory criteria to be satisfied assuming the limiting conditions for operation are met for the various systems. Conformance to the regulatory criteria for operation with the conditional exemption from the near-EOL MTC measurement is demonstrated and the regulatory limits are not exceeded. Therefore, the margin of safety as defined in the TS [technical specification] is not reduced and the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A.H. Gutterman, Esq., Morgan, Lewis, & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: May 24, 2002.

Description of amendment request: The proposed amendments would allow Mode 2 (startup) operation with two, rather than three, intermediate range monitor channels per trip system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The intermediate range monitors (IRMs) monitor neutron flux levels in the reactor core during startup. The IRM detectors are capable of generating a trip signal during a continuous rod withdrawal error in the startup range. However, the IRMs perform no function related to the probability of occurrence of a previously evaluated accident. Also, the IRM trip signal is not necessary to mitigate the limiting control rod withdrawal error. The limiting case assumes the trip signal is generated from the safety-related average power range monitor (APRM). Therefore, the consequences of this previously evaluated abnormal operating transient are not increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change reduces the number of required operable IRM channels per trip system from three to two. However, the manner in which the actuation logic functions and the systems respond are unaffected by the proposed change. Furthermore, the IRMs will continue to perform their design function of core monitoring during startup and mitigating nonlimiting transient events postulated to occur during startup. Therefore, the proposed change cannot create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The Bases for Units 1 and 2 Technical Specification Table 3.3.1.1–1 state the ''IRMs are capable of generating trip signals that can be used to prevent fuel damage resulting from abnormal operating transients in the intermediate power (startup) range.'' The proposed change ensures the IRMs will still effectively mitigate these events. The most significant source of reactivity change is due to a control rod withdrawal error. With the proposed change, the IRMs will continue to

provide protection against rod withdrawal errors, and peak fuel energy depositions will remain below the 170 cal/gm threshold criterion defined in the Technical Specifications Bases. Therefore, the proposed change does not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: John A. Nakoski.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: March 19, 2002, as supplemented on June 3, 2002.

Description of amendment request: The proposed Technical Specification changes involve the removal of the existing scram function and Group 1 isolation valve closure functions of the Main Steam Line Radiation Monitors (MSLRM). An explicit requirement for periodic functional test and calibration of the MSLRM is added to maintain operability of the mechanical vacuum pump (MVP) isolation function. This proposed no significant hazards consideration determination replaces in its entirety the notice published in the **Federal Register** on May 14, 2002 (67 FR 34495).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The scram and Group 1 isolation functions of the MSLRMs do not serve as initiators for any of the accidents evaluated in the Updated Final Safety Analysis Report (UFSAR). The MSLRM scram function is not credited in the UFSAR, and the Group 1 isolation trip function of the MSLRMs was only assumed in one design-basis event which was the control rod drop accident. Because these functions are not initiators of accidents, their removal does not increase the probability of occurrence of previously evaluated accidents.

There is no accident analysis that relies on the high radiation scram of the reactor protection system and its removal has no impact on the consequences of accidents previously evaluated. The results of the control rod drop accident analysis remain within approved guidelines, thus any potential increase in consequences would not be considered significant.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility for a new or different kind of accident from any previously evaluated.

The proposed changes to the plant involve limited changes to protective circuitry, but do not involve any plant hardware changes that could introduce any new failure modes. The changes will not affect non-MSLRM scram and isolation functions. In addition, the MSLRMs will remain active for other trip/isolation functions, and these monitors will still alarm in the control room to alert operators to off-normal conditions.

Therefore, the removal of the Group 1 isolation valve closure and scram functions of the MSLRMs does not create the possibility of a new or different kind of accident than those previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change involves the elimination of the scram and Group I isolation signal from the MSLRMs. Operation under the proposed change will not change any plant operation parameters, nor any protective system setpoints other than removal of these functions. The effects of the control rod drop accident without the MSLRM scram and isolation signal results in doses which remain well within 10 CFR Part 100, ''Reactor Site Criteria,'' limits.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: June 13, 2002.

Brief description of amendment request: The proposed amendment would revise Technical Specifications Section 4.13.A, ''Inspection Requirements,'' to allow the use of the optimum eddy current probe size when performing steam generator tube inspections. The proposed amendment would also correct several grammatical errors.

*Date of publication of individual notice in **Federal Register:*** June 25, 2002 (67 FR 42806).

Expiration date of individual notice: July 25, 2002.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: April 17, 2001.

Brief description of amendment: The amendment makes editorial and administrative corrections to Technical Specifications (TS) Section 3.3,

''Instrumentation,'' and eliminates minor discrepancies between TS Section 3.3 and other plant licensing basis documents.

Date of issuance: June 25, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 152.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 26, 2001 (66 FR 66463). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 25, 2002.

No significant hazards consideration comments received: No.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: December 13, 2001.

Brief description of amendments: The amendments revise Item d of TS 5.5.11, ''Ventilation Filter Testing Program (VFTP),'' to lower the maximum allowable differential pressure across the engineered safety features ventilation systems units when tested at the specified system flow rates.

Date of issuance: June 18, 2002.

Effective date: June 18, 2002, and shall be implemented within 60 days of the date of issuance.

Amendment Nos.: Unit 1–142, Unit 2–142, Unit 3–142.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 5, 2002 (67 FR 5325). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 18, 2002.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of application for amendment: November 19, 2001, as supplemented March 27, 2002

Brief description of amendment: The amendment revises Technical Specification 5.5.16 to eliminate the requirement to perform post-modification containment integrated leakage rate testing following replacement of the Unit 2 steam generators.

Date of issuance: June 27, 2002.

Effective date: As of the date of issuance to be implemented following the Unit 2 refueling and steam generator replacement outage in spring 2003.

Amendment No.: 230.

Renewed License No. DPR–69: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 19, 2002 (67 FR 12599).

The March 27, 2002, supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 27, 2002.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: February 21, 2002.

Brief description of amendment: The amendment authorizes changes to the Updated Final Safety Analysis Report (UFSAR) and the Technical Requirements Manual to eliminate the chlorine detection function from the control center heating, ventilation and air conditioning system. Changes to the UFSAR are subject to the requirements of 10 CFR 50.59; however, the changes were submitted to the Nuclear Regulatory Commission for review and approval since they involve the elimination of an automatic action.

Date of issuance: June 26, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 147.

Facility Operating License No. NPF–43: Amendment revises the UFSAR and TRM.

Date of initial notice in ***Federal Register:*** April 16, 2002 (67 FR 18643). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 26, 2002.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: May 24, 2001.

Brief description of amendment: The amendment deletes License Condition 2.C.(11), which required inspection of the low-pressure turbine discs during the second refueling outage and specified that the frequency of subsequent inspections should be in accordance with the turbine manufacturer's recommendations. License Condition 2.C.(11) is no longer applicable to Fermi 2.

Date of issuance: June 26, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 148.

Facility Operating License No. NPF–43: Amendment revises the License.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64288). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 26, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: June 21, 2000, as supplemented by letters dated April 30 and May 20, 2002.

Brief description of amendments: The amendments authorize changes to the Updated Final Safety Analysis Report Section 10.4.7, ''Emergency Feedwater System.''

Date of Issuance: June 11, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 325/325/326.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments authorized changes to the UFSAR.

Date of initial notice in ***Federal Register:*** July 26, 2000 (65 FR 46008). The supplement dated April 30 and May 20, 2002, provided clarifying information that did not change the scope of the June 21, 2000, application nor the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 11, 2002.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: April 16, 2001, as supplemented by letters dated November 8, 2001, and February 11, 2002.

Brief description of amendment: The amendment authorizes the licensee to modify the Final Safety Analysis Report (FSAR) to allow an unisolable drain line between the reactor core isolation cooling and the control rod drive/condensate pump rooms and identify the pump room doors and penetration seals that are not watertight. In addition, the change documents the minimum acceptable safe shutdown equipment.

Date of issuance: June 19, 2002.

Effective date: June 19, 2002, and shall be implemented in the next periodic update to the FSAR in accordance with 10 CFR 50.71(e).

Amendment No.: 176.

Facility Operating License No. NPF–21: The amendment revises the FSAR.

Date of initial notice in ***Federal Register:*** May 16, 2001 (66 FR 27175). The November 8, 2001 and February 11, 2002, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: April 11, 2002.

Brief description of amendment: The amendment revises Technical Specification Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed Surveillance. The delay period is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified

Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: June 27, 2002.

Effective date: June 27, 2002.

Amendment No.: 212.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34485). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 27, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: March 13, 2002.

Brief description of amendment: The amendment revises Surveillance Requirement (SR) 3.0.3 to extend the delay period before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: June 10, 2002.

Effective date: As of the date of issuance and shall be implemented in conjunction with the implementation of Amendment No. 215.

Amendment No.: 217.

Renewed Facility Operating License No. DPR–51: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 30, 2002 (67 FR 21287). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: August 1, 2001.

Brief description of amendments: These amendments revise Limerick Generating Station's Units 1 and 2 Technical Specifications by deleting Section 6.4, ''Training.''

Date of issuance: June 14, 2002.

Effective date: As of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 160/122.

Facility Operating License Nos. NPF–39 and NPF–85: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55018). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 14, 2002.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: April 18, 2002.

Brief description of amendment: The proposed amendment revises Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: June 26, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 203.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34487). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 26, 2002.

No significant hazards consideration comments received: No.

GPU Nuclear Inc., Docket No. 50–320, Three Mile Island Nuclear Station, Unit 2, Dauphin County, Pennsylvania

Date of amendment request: February 8, 2002.

Brief description of amendment request: The amendment would replace referenced control requirements for access to high radiation areas with the actual requirements of 10 CFR Part 20, and would replace the existing Three Mile Island Nuclear Station, Unit 2, Technical Specifications (TS) Section 6.11 with the wording contained in Three Mile Island Nuclear Station, Unit 1, TS Section 6.12.

Date of issuance: June 27, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 58.

Facility Operating License No. DPR–73: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 2, 2002 (67 FR 15623). The Commission's related evaluation of the amendment is contained in a safety evaluation dated June 27, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: June 18, 2001, as supplemented by letters dated January 30, and March 1, 2002.

Brief description of amendment: The amendment revises (1) the reference point for reactor vessel level instrumentation specifications to use instrument ''zero'' instead of ''top of active fuel;'' (2) simplifies the safety limits and limiting safety system settings to eliminate specifications that are unnecessary, outdated, or redundant to other Technical Specifications (TSs); (3) changes the reactor coolant system pressure safety limit from 1335 psig to 1332 psig to correct a minor calculation error; and (4) makes corresponding TS Bases changes.

Date of issuance: June 11, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 128.

Facility Operating License No. DPR–22: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 25, 2001 (66 FR 38764). The supplements dated January 30 and March 1, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 11, 2002.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: January 10, 2002.

Brief description of amendments: The amendments revise Surveillance Requirement (SR) 3.0.3 to extend the delay period before entering a Limiting Condition for Operation following a missed surveillance. The delay period is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: June 19, 2002.

Effective date: June 19, 2002, shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–153; Unit 2–153.

Facilit Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 5, 2002 (67 FR 10014). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 19, 2002.

No significant hazards consideration comments received: No.

Southern California Edison Company, Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: May 22, 2002, as supplemented by letters dated June 10, and June 14, 2002.

Brief description of amendment: This amendment revises Technical Specification (TS) TS 5.5.2.11.f.1.h, ''Steam Generator (SG) Tube Surveillance Program,'' to more clearly delineate the scope of the SG tube inspection required in the tubesheet region. This TS change will apply only to Cycle 12 (Unit 2) and Cycle 11 (Unit 3) operations.

Date of issuance: June 17, 2002.

Effective date: June 17, 2002, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 2—189 ; Unit 3—180.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (67 FR 38150 dated May 31, 2002). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by July 1, 2002, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of California and final determination of no significant hazards consideration are contained in a Safety Evaluation dated June 17, 2002. The June 10, and June 14, 2002, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: March 25, 2002, as supplemented by the letter dated April 23, 2002.

Brief description of amendments: The proposed change revised the Technical Specification (TS) 3.7.3, ''Feedwater Isolation Valves (FIVs) and Associated Bypass Valves,'' to adopt the NUREG–1431, ''Standard Technical Specifications for Westinghouse Plants,'' Revision 2 version of the specification. The requirements of revised TS 3.7.3 added, among other things, operability and suitable surveillance requirements for Feedwater Control Valves and Associated Bypass Valves and allowed for the extended out-of-service time for one or more FIVs. In addition, a footnote which allowed a one-time extension for Condition A Completion Time, has been deleted because it is no longer applicable.

Date of issuance: June 20, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: NPF–87, Amendment No. 97 and NPF–89, Amendment No. 97.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34492). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 20, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 1st day of July 2002.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–16956 Filed 7–8–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46147; File No. SR–CSE–2002–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Extending a Pilot Revenue Sharing Program for Trading in Nasdaq National Market Securities

June 28, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2002, the Cincinnati Stock Exchange, Inc. (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend a pilot related to a fee schedule for transactions in Nasdaq National Market securities (''Nasdaq NM Securities'') and to establish a revenue sharing program to reflect recent developments in competitive business strategy. The text of the proposed rule change is below. Additions are in italics, and deletions are in brackets.

Chapter XI

Trading Rules

Rule 11.10 National Securities Trading System Fees

A. Trading Fees (No Change to Text)

* * * * *

(e)*(1)* (No Change to Text)

(2) Tape ''C'' Transactions. Tape ''C'' Transactions are defined as transactions conducted in Nasdaq securities pursuant to unlisted trading privileges (''UTP''). Members will be charged a per share fee for Nasdaq securities based upon the following schedule:

Number of Shares Traded (In a single day)	*Fee Per Share*
0–5 million	*$0.001*
5 million one plus+	*$0.000025*

* * * * *

(l) [Tape ''C'' Transactions. Tape ''C'' Transactions are defined as transactions conducted in Nasdaq securities pursuant to unlisted trading privileges (''UTP''). Members will be charged $.001 per share per side ($1.00/1000 shares), with a maximum charge of $37.50 per firm per side, for Tape C Transactions.]

[Tape ''C'' Transaction Credit. Members will receive a 75 percent pro rata credit on revenue generated by transactions in Tape ''C'' securities.

[(l)]*(m)* (No Change in Text)

[(m)]*(n)* (No Change in Text)

[(n)]*(o)* (No change in Text)

[(o)]*(p)* (No change to text).

[(p)]*(q)* (No change to text)

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend the pilot revenue sharing program filed for immediate effectiveness on March 25, 2002.[3] Under the CSE's program for trading Nasdaq NM securities, member firms will receive a 75 percent revenue (75%) pro rata transaction credit on all Nasdaq Tape C market data revenue generated by member trading activity. The pilot program will expire August 30, 2002, if not renewed.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[4] generally, and section 6(b)(5) of the Act,[5] in particular, in that it is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposal also is consistent with Section 6(b)(4) of the Act[6] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting CSE members on a pro rata basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(2) thereunder,[8] as establishing or changing a due, fee, or other charge paid solely by members of the CSE. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–2002–06 and should be submitted by July 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–17130 Filed 7–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46128; File No. SR–PCX–2002–26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Maintenance of Books and Records

June 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the Exchange. PCX submitted Amendment No. 1 to the proposed rule change on June 11, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes new rules, PCX Rule 4.20 and 4.21, in order to codify the existing obligations of Members and Member Organizations to keep and preserve books and records. The text of the proposed rule change is below. Proposed new language is italicized; deleted language is in brackets.

Books and Records

Rule 4.20*(a)* [Reserved.] *Each Member and Member Organization must make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Securities Exchange Act of 1934 and the rules and regulations thereunder (including any interpretation relating thereto) as though such Members or Member Organization were a broker or dealer registered with the SEC pursuant to Section 15 of the Exchange Act. No Member or Member Organization may refuse to make available to the Exchange such books, records or other information as may be called for under the Rules or as may be requested in connection with an Exchange investigation.*

Commentary:

.01 The following Exchange Rules contain specific requirements with regard to the maintenance, retention and furnishing of books, records and

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[3] Securities Exchange Act Release No. 45642 (March 26, 2002), 67 FR 15436 (April 1, 2002) (File No. SR–CSE–2002–03).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange: (1) stated that the proposed rule change was being filed pursuant to Section 19(b)(2) of the Act and requested accelerated effectiveness; (2) revised typographical errors in the proposed rule text; (3) added the parenthetical (including any interpretation relating thereto) to proposed PCX Rule 4.20(a); and (4) clarified that the phrase ''contra organization'' in proposed PCX Rule 4.20(b) is an industry term of art that also means counter party. *See* letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 10, 2002 (''Amendment No. 1''). PCX further clarified that the phrase ''contra organization'' refers to the clearing firm. Telephone call between Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, and Jennifer Lewis, Attorney, Division, Commission, on June 19, 2002.

other information: Rules 1.16, 2.1, 2.4, 2.6, 2.7, 2.8, 2.10, 2.11, 2.12, 2.15, 2.18, 4.9, 4.10, 4.20, 4.21, 4.25, 6.14, 6.15, 6.16, 6.17, 6.18, 6.19, 6.39, 6.41, 6.46, 6.68, 6.69, 9.2, 9.17 and 9.18. The foregoing list is not intended to be exhaustive and Members and Member Organizations must comply with applicable record keeping and reporting requirements regardless of whether they are listed here.

* * * * *

Daily Position Statements

Rule 4.20(b) Each Member and Member Organization must receive daily position statements with respect to securities held by the Options Clearing Corporation or any member thereof, the DTCC or any similar clearing organization and must reconcile securities and money balances at least once per month by comparing those position statements against the Member or Member Organization's books and records. Each Member or Member Organization must promptly report any differences to the contra organization. A Member or Member Organization who processes transactions through the Member or Member Organization's clearing firm's clearance account may utilize those clearance account records to satisfy this record keeping requirement provided that: (i) the Member Organization clearing firm complies with the provisions of SEC Rules 17a–3(b)(2) and 17a–4(i); (ii) the Member or Member Organization maintains those clearance account records pertaining to the daily activity and total position in each series of options; and (iii) the Member or Member Organization reconciles any discrepancies between the clearance account records and any financial reports that the Member or Member Organization is required to maintain pursuant to Rule 4.20(a). Each Member and Member Organization must maintain reports that evidence reconciliation for at least six years, the first two years in an easily accessible place.

Error Accounts

Rule 4.21*(a)* Each Member or Member Organization [whose principal business is] *which conducts business* as a floor broker on the Exchange and who is not self-clearing must establish and maintain an account with a clearing member of the Exchange, for the sole purpose of carrying positions resulting from bona fide errors made in the course of its floor brokerage business. With respect to options floor brokers only, such an account for option transactions must be maintained with *a clearing member* [an entity] that is also a member of the Options Clearing Corporation.

(b) Each such Member or Member Organization which conducts business as a floor broker must make available to the Exchange, upon request, accurate and complete records of all trades cleared in such Member or Member Organization's error account. These records must include the audit trail data elements prescribed below:

(1) name or identifying symbol of the security;

(2) number of shares or quantity of security;

(3) transaction price;

(4) time of trade execution;

(5) executing broker badge number, or alpha symbol as may be used from time to time, in regard to its side of the contract;

(6) executing broker badge number, or alpha symbol as may be used from time to time, of the contra side to the contract;

(7) clearing firm number, or alpha symbol as may be used from time to time, in regard to its side of the contract;

(8) clearing firm number, or alpha symbol as may be used from time to time, in regard to the contra side of the contract;

(9) designation of whether the account for which the order was executed was that of a Member or Member Organization;

(10) the nature and amount of the error;

(11) the Member or Member Organization that cleared the error trade on the Member's or Member Organization's behalf;

(12) an explanation of the means by which the Member or Member Organization resolved the error;

(13) the aggregate amount of liability that the Member or Member Organization incurred and: (i) had outstanding as of the time each such error trade entry was recorded or (ii) had cleared by other Members or Member Organizations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Exchange rules obligate Members and Member Organizations to make, keep current, and preserve certain books and records.[4] In addition, the Exchange relies on the Commission's comprehensive books and records rules, Rule 17a–3 [5] and Rule 17a–4 [6] of the Act, as the basis of its authority to require Members and Member Organizations to maintain and retain books and records not covered under the Exchange's express rules.

The Exchange now proposes to adopt a new rule to codify books and records requirement and to make clear to Members and Member Organizations that the Commission's comprehensive books and records rule applies to all Members and Member Organizations. The Exchange also proposes to codify its policies with respect to maintenance of daily position statements and error account information.

As proposed, the new rule would require all Members and Member Organizations to make, keep current, and preserve such books and records as the Exchange may prescribe and as those that may be prescribed by the Act and the rules and regulations thereunder (including any interpretation relating thereto). The proposed rule further provides that no Member or Member Organization may refuse to make available to the Exchange such books, records or other information as may be called for under the PCX rules or as may be requested in connection with an Exchange investigation.

With respect to maintaining daily position statements, the proposed rule provides that each Member and Member Organization must receive daily position statements with respect to securities held by the Options Clearing Corporation or any member thereof, the DTCC or any similar clearing organization and must reconcile securities and money balances at least once per month by comparing those position statements against the Member or Member Organization's books and records. The proposed rule provides that a Member or Member Organization who processes transactions through the Member or Member Organization's

[4] *See, e.g.*, PCX Rule 2.4 (Restrictions on Member Activities); PCX Rule 2.10 (Customer Statements); PCX Rule 4.25 (Supervision—Written Procedures); and PCX Rule 6.14 (General Comparison and Clearance Rules).

[5] 17 CFR 240.17a–3.

[6] 17 CFR 240.17a–4.

clearing firm's clearance account may utilize those clearance account records to satisfy this record keeping requirement provided that: (i) the Member Organization clearing firm complies with the provisions of Rules 17a–3(b)(2) [7] and 17a–4(i) [8] of the Act; (ii) the Member or Member Organization maintains those clearance account records pertaining to the daily activity and total position in each series of options; and (iii) the Member or Member Organization reconciles any discrepancies between the clearance account records and any financial reports that the Member or Member Organization is required to maintain. As proposed, each Member and Member Organization would be required to maintain reports that evidence reconciliation for at least six years, the first two years in an easily accessible place.

Regarding error accounts, the proposed rule provides that each Member or Member Organization which conducts business as a floor broker must make available to the Exchange, upon request, accurate and complete records of all trades cleared in such Member or Member Organization's error account. The proposed rule would also require that the error account records include certain audit trail data elements including, for example, name of the security, quantity and the nature and amount of the error.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, because it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

[7] 17 CFR 240.17a–3(b)(2).

[8] 17 CFR 240.17a–4(i).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–26 and should be submitted by July 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–17131 Filed 7–8–02; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Federal and State Technology Partnership Program to Provide Outreach and Technical Assistance to Small Technology-Based Businesses Interested in Becoming Involved or Presently Involved in Federal R & D Programs

AGENCY: Small Business Administration.

ACTION: Program Announcement No. FAST–02–R–0002 technical amendment.

SUMMARY: A technical amendment to the U.S. Small Business Administration (SBA) Program Announcement No. FAST–02–0002. The amendment is being issued to address errors in the original document. Corrections pertain to the cover letter to prospective applicants; Section V, Glossary of Terms; Section VI, Program Overview, Items L, P and S; Section VII, Organization and Staff Qualifications.

Letter to Prospective Applicants

Current: Federal and State Technology Transfer Partnership Program.

Correction: Delete the word Transfer in the Subject line.

Section V—Glossary of Terms—Page 7

Current: Socially and economically disadvantaged.

Correction: Socially and economically disadvantaged (minority-owned).

Section VI—Item L—Page 10

Current: XXXXXXX.

Correction: Delete and replace XXXXX * * * with July 25, 2002.

Section VI—Item P—Page 12

Current: Applicants receiving scores of 70 or greater will than be submitted to the second tier Committee for final review and selection. Applications for new and incumbent applicants will undergo a second level ''joint'' review by program officials representing the SBA, Department of Defense and National Science Foundation.

Correction: Delete current sentences and replace with—(Last sentence, first paragraph) Scores for both new and incumbent applicants will then be compiled and ranked. (First sentence, second paragraph) Proposals that meet the baseline score of 90 will be forwarded to the second tier evaluation panel for review and funding recommendation.

Applications for new and incumbent applicants with a score of 90 or above will undergo a second level ''joint'' review by program officials representing

the SBA, Department of Defense and National Science Foundation.

Section VII—Organizational and Staff Qualifications (New and Incumbent Applicants Pages 18 and 22 Paras. 4 and 2 Respectively)

Current: This position must be created/assigned to a qualified individual within or to be hired by the recipient organization and a minimum of 60% of this individual's time must be committed solely to the oversight and administration of the FAST project.

Correction: Delete 60% and replace with'This position must be created/assigned to a qualified individual within or to be hired by the recipient organization and the applicant must specify the amount of time this individual will commit to the oversight and administration of the FAST project. The applicant must also justify the adequacy of such time commitment to the proper administration of the FAST grant/award.

Section VI, Item S—Page 13. Para. 1 and 2

Current: The Project Director must be a full-time employee of the recipient and must devote a minimum of 60% of his/her time to the conduct and management of this project.

Correction: Delete current sentence and replace with—The Project Director must be a full/part-time employee of the recipient. The applicant must specify the amount of time this individual will commit to the project including project oversight and administration thereof. The applicant must also justify the adequacy of such time commitment to the proper administration of the FAST grant/award.

Current: The recipient should do 51% of the work required for this effort. A minimum of 51% of the proposed time and effort in terms of project cost shall be conducted through use of the applicant's internal resources. An applicant must document that at least 51% of both qualified staff and systems necessary to perform the proposed work effort are in-residence at the time of award.

Correction: The recipient should do 51% of the work required for this effort. A minimum of 51% of the proposed time and effort in terms of project cost should be conducted through use of the applicants internal resources. To facilitate more effective geographic coverage for the proposed project, the applicant may need to subcontract more than 49% of the work required for this effort. If the applicant finds that more than 49% of the project needs to be subcontracted, excluding project oversight and administration, to better provide services to the target community, the applicant must provide a narrative justification substantiating the need to subcontract more than 49% of the project in both the technical and cost portions of the FAST proposal. In any case, no more than 70% of the project may be subcontracted, and the applicant must document that adequate and qualified staff and systems in-residence are in place at the time of award to perform the proposed work effort.

All other terms and conditions in this announcement remain the same.

DATES: The application period will be from June 10, 2002 until July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Cherina Hunter, (202) 205–7344 or Mina Bookhard (202) 205–7080.

Maurice Swinton,

Assistant Administrator, SBA Office of Technology.

[FR Doc. 02–17108 Filed 7–8–02; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing concerning China's compliance with its WTO commitments.

SUMMARY: The Office of the United States Trade Representative (USTR) requests comments on China's compliance with the commitments it made in connection with its accession to the World Trade Organization (WTO). In addition, the Trade Policy Staff Committee (TPSC) will conduct a public hearing concerning China's compliance with these commitments.

DATES: Written comments are due by noon, Tuesday, September 10, 2002. A hearing will be held in Washington, DC, on Wednesday, September 18, 2002. Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as a copy of their testimony, by noon, Thursday, September 5, 2002.

ADDRESSES: Submissions by mail or express delivery: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, ATTN: China WTO, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508.

Submissions by electronic mail: *FR0020@ustr.gov* (written comments); and *FR0021@ustr.gov* (notice of testimony and testimony). See requirements for submissions below.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comment or the public hearing, contact Gloria Blue, (202) 395–3475. All other questions should be directed to Terrence J. McCartin, Director of Monitoring and Enforcement for China, (202) 395–3900, or David Weller, Assistant General Counsel, (202) 395–3581.

SUPPLEMENTARY INFORMATION:

1. Background

China formally became a member of the WTO on December 11, 2001. In accordance with section 421 of the U.S.-China Relations Act of 2000 (Pub. L. 106–286), the USTR is required to submit, by December 11 of each year, a report to Congress on China's compliance with commitments made in connection with its accession to the WTO, including both multilateral commitments and any bilateral commitments made to the United States. In accordance with section 421, and to assist it in preparing the report, USTR is hereby soliciting public comment.

The terms of China's accession to the WTO are contained in the Protocol on the Accession of the People's Republic of China (including its annexes) (Protocol), the Report of the Working Party on the Accession of China (Working Party Report), and the WTO Agreement. The Protocol and Working Party Report can be found on the Department of Commerce webpage, *http://www.mac.doc.gov/China/WTOAccessionPackage.htm,* or on the WTO website, *http://docsonline.wto.org* (document symbols: WT/L/432, WT/MIN(01)/3, WT/MIN(01)/3/Add.1, WT/MIN(01)/3/Add.2).

2. Public Comment and Hearing

USTR invites written comments and/or oral testimony of interested persons on China's compliance with commitments made in connection with its accession to the WTO, including, but not limited to, commitments in the following areas: (a) Trading rights; (b) import regulation (e.g., tariffs, tariff-rate quotas, quotas, import licenses); (c) export regulation; (d) internal policies affecting trade (e.g., subsidies, standards and technical regulations, sanitary and phytosanitary measures, trade-related investment measures, taxes and charges levied on imports and exports); (e) intellectual property rights (including intellectual property enforcement); (f)

services; (g) rule of law issues (e.g., transparency, judicial review, uniform administration of laws and regulations) and status of legal reform; and (h) other WTO commitments. Persons submitting written comments should list one or more of these categories on the first page of the comments, in order to identify the commitments discussed therein.

Written comments must be received no later than noon, Tuesday, September 10, 2002. Comments may be submitted by mail, express delivery service, or e-mail (to *FR0020@ustr.gov*). It is strongly recommended that comments submitted by mail or express delivery service also be sent by e-mail.

A hearing will be held on Wednesday, September 18, 2002, in Room 1, 1724 F Street, NW., Washington, DC 20508. If necessary, the hearing will continue on the next day.

Persons wishing to testify orally at the hearing must provide written notification of their intention by noon, Thursday, September 5, 2002. Requests should be made by e-mail (to *FR0021@ustr.gov*). The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the commitments at issue and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects to be discussed. Notifications must be accompanied by a copy of the testimony. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the Chairman and the interagency panel.

All documents should be submitted in accordance with the instructions in section 3 below.

3. Requirements for Submissions

Persons making submissions by e-mail should use the following subject line: ''China WTO'' followed by (as appropriate) ''Written Comments'', ''Notice of Testimony'', or ''Testimony''. Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC–'', and the file name of the public version should begin with the characters ''P–''. The ''P–'' or ''BC–'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Persons submitting written comments by mail or express delivery service should provide 20 copies.

Written comments, notices of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 02–17186 Filed 7–8–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12692]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ALEMAR.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-Build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 8, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12692. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* ALEMAR. *Owner:* Alemar, LLC.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''Tonnage: 41 Tons Gross, 37 Tons Net; Length: 53.5 feet.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''Coastwise yacht charters from New York City to Cutler, Maine for up to four (4) people per charter.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1990. *Place of construction:* Tan Shui, Taipei, Republic of China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''There should be little or no effect on other vessel operators. Most Commercial operators of similar sized vessels in New England offer daily ''head boat'' charters. Alemar is available only for fully crewed and provisioned charters for a minimum of seven days.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''This vessel has been maintained exclusively by U.S. shipyards. In the fall of 2001 a major refit took place at the Hinckley Company, Southwest Harbor, Maine at a cost of $135,000. Previous works was performed at Little Harbor Yachts, Portsmouth, Rhode Island and Osprey Marine, Maryland. New sails were built at North Sails, Portsmouth, Rhode Island. Further, to my knowledge, no U.S. shipyards is building similar sailing vessels that Alemar would compete with for business.''

Dated: July 2, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–17177 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12693]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TAKE FIVE.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-Build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 8, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12693. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* TAKE FIVE. *Owner:* John R. Miller Enterprises, LLC.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''55′1″, Gross Tons 40, Capacity 8″.

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''Recreational Charter use in Southern Florida.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1998. *Place of construction:* Italy.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''This waiver should not have any impact on * * * other commercial passenger operators. We are only using this vessel for private, recreational charters and personal use.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''This waiver should not have any impact on * * * US Shipyards * * *''

Dated: July 2, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–17178 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2002–11270, Notice No. 02–07]

Safety Advisory: Retesting of Cylinders Without Calibration of Test Equipment

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that RSPA is investigating BKC Industries, Inc., 2117 Will Suitt Road, Creedmoor, NC 27522 for the marking of DOT cylinders and/or tube trailers

without calibrating its test apparatus. RSPA has determined that, between September of 1998 and October of 2001, BKC Industries, Inc. (BKC) apparently marked and certified an undetermined number of cylinders and/or tube trailers as having been properly tested in accordance with the Hazardous Materials Regulations (HMR), when the cylinders and/or tube trailers were tested using equipment that was not properly calibrated.

Part of performing a proper hydrostatic retest as set forth in the HMR is the calibration process. A hydrostatic retest and visual inspection, conducted as prescribed in the HMR, are used to verify the structural integrity of a cylinder. If the hydrostatic retest and visual inspection are not performed in accordance with the HMR, a cylinder with compromised structural integrity may be returned to service when it should be condemned. Extensive property damage, serious personal injury, or death could result from rupture of a cylinder. Cylinders that have not been retested in accordance with the HMR may not be charged or filled with compressed gas or other hazardous materials.

FOR FURTHER INFORMATION CONTACT: Terrell Hinds, Hazardous Materials Enforcement Specialist, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, U.S. Department of Transportation, 1701 Columbia Avenue, Suite 520, College Park, GA 30337, Telephone: (404) 305–6120, Fax: (404) 305–6125.

SUPPLEMENTARY INFORMATION: Through its inspection of BKC, RSPA has determined that BKC apparently marked an undetermined number of cylinders as having been properly tested in accordance with the HMR, when the test apparatus was not calibrated properly. During the inspection, RSPA discovered that the test cylinder that appeared on BKC Industries' test reports was not physically in the BKC facility. Therefore, this cylinder could not have been used to calibrate the test equipment.

The cylinders in question are stamped with the following RIN: D236. The marking appears in the following pattern:

D2
M Y
63

M is the month of retest (*e.g.* 08), and y is the year of retest (*e.g.* 01).

Anyone who has a cylinder or tube trailer that has been serviced by BKC Industries, Inc. and that is marked with RIN D236 and stamped with a retest date between August 1998 and October 2001 should consider the cylinder unsafe and not fill the cylinder unless the cylinder is first properly retested by a DOT-authorized retest facility. Filled cylinders should be vented or otherwise safely discharged, and then taken to a DOT-authorized cylinder retest facility for proper retest to determine compliance with the HMR and their suitability for continuing service. Under no circumstances should a cylinder and/or tube trailer described in this safety advisory be filled, refilled or used for its intended purpose until it is reinspected and retested by a DOT-authorized retest facility.

It is further recommended that persons finding or possessing a cylinder and or tube/trailer described in this safety advisory contact Mr. Hinds for additional information.

Issued in Washington, DC, on July 2, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Material Safety.

[FR Doc. 02–17093 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34224]

Indiana Southern Railroad, Inc—Trackage Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NSR), pursuant to a written trackage rights agreement entered into between NSR and Indiana Southern Railroad, Inc. (ISRR), has agreed to grant non-exclusive local trackage rights to ISRR over NSR's rail line between a point near Newburgh, IN, milepost 0.0, and Lynnville Mine, IN, milepost 21.9, a distance of approximately 21.9 miles.

The transaction was scheduled to be consummated on or shortly after July 1, 2002, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the trackage rights is to allow ISRR to enhance service for certain shippers and provide more efficient and economical routings and service for their traffic.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

The notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34224, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at ''*http://WWW.STB.DOT.GOV*.''

Decided: July 1, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–16991 Filed 7–8–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0253]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 8, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0253.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human

Resources and Housing Branch, New Executive Office Building, Room 12035, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0253'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Nonsupervised Lender's Nomination and Recommendation of Credit Underwriter, VA Form 26–8736a.

OMB Control Number: 2900–0253.

Type of Review: Extension of a currently approved collection.

Abstract: Standards established by VA require that a lender have a qualified underwriter review all loans to be closed on an automatic basis to determine that the loan meets VA's credit underwriting standards. To determine if the lender's nominee is qualified to make such a determination, VA Form 26–8736a is used to evaluate the underwriter's experience. The form is completed by the lender and the lender's nominee for underwriting and submitted to VA for approval.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 23, 2002, at pages 19807–19808.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 1,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,000.

Dated: June 26, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service

[FR Doc. 02–17125 Filed 7–8–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0576]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 8, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.gov.* Please refer to ''OMB Control No. 2900–0576.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0576'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Affirmation of Enrollment Agreement—Correspondence Course (Under Chapters 20, 32, & 35, Title 38 U.S.C., Section 903 of PL 96–342, or Chapter 1606, Title 10, U.S.C.

OMB Control Number: 2900–0576.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA is required to pay educational benefits for correspondence training under Chapters 20, 32, & 35, Title 38 U.S.C., Section 903 of PL 96–342, or Chapter 1606, Title 10, U.S.C. When a claimant enrolls in a correspondence training course, he or she must sign VA Form 22–1999c and submit the form to the correspondence school to affirm the enrollment agreement contract. The correspondence school's certifying official attaches an enrollment certification to VA Form 22–1999c and submits both forms to VA for processing. Without this information, VA could not determine if the claimant has been informed of the 10-day reflection period required by law and whether or not to pay education benefits for correspondence training.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 22, 2002, at pages 19623–19624.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,700 hours.

Estimated Average Burden Per Respondent: 3 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 235.

Dated: June 21, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–17126 Filed 7–8–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0049]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 8, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0049.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0049'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title:

a. Request for Approval of School Attendance, VA Form 21–674 and 21–674c.

b. School Attendance Report, VA Form 21–674b.

OMB Control Number: 2900–0049.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–674 and 21–674c are used to collect the necessary information to determine entitlement to compensation and pension benefits for a child between the ages of 18 and 23 attending school. VA Form 21–674b is used to confirm the school attendance of a child for whom VA compensation or pension benefits are being received.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 15, 2002, at pages 18305–18306.

Affected Public: Individuals or households.

Estimated Annual Burden: 14,792 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 177,500.

Dated: June 26, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–17127 Filed 7–8–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0568]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 8, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0568.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0568'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Submission of School Catalog to the State Approving Agency.

OMB Control Number: 2900–0568.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: Accredited educational institutions, with the exceptions of elementary and secondary schools, must submit a copy of their catalog to the State approving agency when applying for approval of a new course. State approval agencies use the catalogs to determine what courses can be approved for VA training. Without this information, the State approving agency cannot determine what courses could be approved.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 22, 2002, at pages 19622—19623.

Affected Public: Not-for-profit institutions, business or other for-profit.

Estimated Annual Burden: 1,900 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 7,600.

Dated: June 26, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–17128 Filed 7–8–02; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
July 9, 2002

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7214–7]

RIN 2060–AG29

National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes national emission standards for hazardous air pollutants (NESHAP) for new and existing sources at rubber tire manufacturing facilities. The EPA has identified rubber tire manufacturing facilities as major sources of hazardous air pollutants (HAP) emissions. These standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all such major sources to meet HAP emission standards that reflect the application of maximum achievable control technology (MACT). The primary HAP that will be controlled with this action include toluene and hexane. These HAP are associated with a variety of adverse health effects including chronic health disorders (e.g., polyneuropathy, degenerative lesions of the nasal cavity) and acute health disorders (*e.g.,* respiratory irritation, headaches).

EFFECTIVE DATE: July 9, 2002.

ADDRESSES: *Docket.* All information considered by the EPA in developing this rulemaking, including public comments on the proposed rule and other information developed by the EPA in addressing those comments since proposal, is located in Public Docket No. A–97–14 at the following address: Air and Radiation Docket and Information Center (6102), U.S. EPA, 401 M Street, SW., Washington, DC 20460. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. Materials related to this rulemaking are available upon request from the Air and Radiation Docket and Information Center by calling (202) 260–7548 or 7549. The FAX number for the Center is (202) 260–4400. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local regulatory agency representative or the appropriate EPA Regional Office representative. For information concerning analyses performed in developing this rule, contact Mr. Anthony Wayne, Policy, Planning and Standards Group, Emission Standards Division (C439–04), U.S. EPA, Research Triangle Park, North Carolina, 27711; telephone number (919) 541–5439; fax number (919) 541–0942; electronic mail address: *wayne.tony@epa.gov.*

SUPPLEMENTARY INFORMATION:

Judicial Review. Under CAA section 307(b), judicial review of the final NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before September 9, 2002. Only those objections to the NESHAP which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2)of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC [a]	NAICS [b]	Regulated entities
Industry	3011 7534 2296	326211 326212 314992	Rubber tire manufacturing facilities.

[a] Standard Industrial Classification.
[b] North American Information Classification System.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.5981 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult your State or local agency (or EPA Regional Office) described in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.*

Outline. The information in this preamble is organized as follows:

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by today's final rule was listed on July 16, 1992 (57 FR 31576). Major source means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, 10 tons per year (tons/yr) or more of any one HAP or 25 tons/yr or more of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the maximum achievable control technology (MACT).

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent that the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on consideration of the cost of achieving the emission reductions, any health and environmental impacts, and energy requirements.

C. How Did the Public Participate in Developing the Rule?

Prior to proposal, we met with industry representatives and State regulatory authorities several times to discuss the data and information used to develop the proposed standards. In addition, these and other potential stakeholders, including equipment vendors and environmental groups, had opportunity to comment on the proposed standards.

The proposed rule was published in the **Federal Register** on October 18, 2000 (65 FR 62414). The preamble to the proposed rule discussed the availability of technical support documents, which described in detail the information gathered during the standards development process. Public comments were solicited at proposal.

We received 19 public comment letters on the proposed rule. The commenters represent the following affiliations: Rubber tire manufacturers (4 companies), industrial trade associations (5), and one State and local agency association. In the post-proposal period, we talked with commenters and other stakeholders to clarify comments and to assist in our analysis of the comments. Records of these contacts are found in docket A–97–14. All of the comments have been carefully considered, and, where appropriate, changes have been made for the final rule.

II. Summary of Final Rule

The rule will apply to existing, new and reconstructed rubber tire manufacturing facilities that are major sources of HAP emissions standing alone or are major sources due to collocation with other facilities that emit HAP. We have subcategorized the rubber tire manufacturing source category into the following four subcategories of affected sources:

- Rubber processing
- Tire production
- Tire cord production
- Puncture sealant application.

Table 1 summarizes the emission limit options for the tire production, tire cord production, and puncture sealant application affected sources. There are no emission limits or other requirements associated with rubber processing affected sources.

TABLE 1.—EMISSION LIMIT OPTIONS FOR AFFECTED SOURCES

Affected source	Pollutant	Limit[a]
Existing, new or reconstructed tire production facility—Option 1.	Selected organic HAP (See Table 16 of final rule).	Emissions must not exceed 1,000 grams per megagram (2 pounds per ton) of the total cements and solvents used.
	All other organic HAP	Emissions must not exceed 10,000 grams per megagram (20 pounds per ton) of the total cements and solvents used.
Existing, new or reconstructed tire production facility—Option 2.	All organic HAP	Emissions must not exceed 0.024 grams per megagram (0.00005 pounds per ton) of rubber used.
Existing tire cord production facility—Option 1	All organic HAP	Emissions must not exceed 280 grams per megagram (0.56 pounds per ton) of fabric processed.
New or reconstructed tire cord production facility—Option 1.	All organic HAP	Emissions must not exceed 220 grams per megagram (0.43 pounds per ton) of fabric processed.
Existing, new or reconstructed tire cord production facility—Option 2.	Selected organic HAP (See Table 16 of final rule).	Emissions must not exceed 1,000 grams HAP per megagram (2 pounds per ton) of total coatings used.
	All other organic HAP	Emissions must not exceed 10,000 grams HAP per megagram (20 pounds per ton) of total coatings used.

TABLE 1.—EMISSION LIMIT OPTIONS FOR AFFECTED SOURCES—Continued

Affected source	Pollutant	Limit[a]
New or reconstructed puncture sealant application booth—Option 1.	All organic HAP (measured as volatile organic compounds (VOC)).	Reduce spray booth emissions by at least 95 percent.
Existing puncture sealant application booth—Option 1	All organic HAP (measured as VOC).	Reduce spray booth emissions by at least 86 percent.
Existing, new or reconstructed puncture sealant application booth—Option 2.	Selected organic HAP (See Table 16 of final rule).	Emissions must not exceed 1,000 grams HAP per megagram (2 pounds per ton) of total puncture sealants used.
	All other organic HAP	Emissions must not exceed 10,000 grams HAP per megagram (20 pounds per ton) of total puncture sealants used.

[a] Emission limits are expressed as monthly average emission limits except for: (1) Tire production affected sources that comply by demonstrating that the cements and solvents that they use comply with the emission limit for every purchase; and (2) puncture sealant application affected sources that comply by meeting the overall control efficiency option which requires such sources to meet the emission reduction limit on a 3-hour average.

The final rule also establishes operating limits for puncture sealant application affected sources that are complying with the overall control efficiency standards (*i.e.,* 86 percent emission reduction or 95 percent emission reduction). The operating limits are established on a source-specific basis. Once established, sources must maintain specified control device and capture system operating parameter(s) within the range(s) established during the performance test and according to the source's monitoring plan.

The final rule requires demonstrations of initial and ongoing compliance with the emission limitations. The specific requirements vary according to the affected source and the compliance alternative selected by that source. The final rule also establishes compliance dates, as well as provisions for performance testing, monitoring, recordkeeping, and reporting.

III. Significant Comments and Changes Since Proposal

This section includes discussion of significant comments on the proposed rule, particularly where we have made changes for the final rule to address those comments. For a complete summary of all the comments received on the proposed rule and our responses to them, refer to the ''Technical Document for Promulgation of Standards, National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing, Comment and Response Summary'' (hereafter called the ''response to comments document'') in docket A–97–14. The docket also contains the actual comment letters and supporting documentation developed for the final rule.

A. What Sources Are Subject to the Rule?

We received several comments raising questions on the applicability of the rule to specific sources at rubber tire manufacturing facilities. We have clarified the applicability provisions in the final rule. This section describes in more detail how the rule applies to various operations at rubber tire manufacturing facilities.

1. Tire Bladders

The final rule applies to manufacturers of rubber tires and components integral to rubber tires, as well as tire cord producers and puncture sealant operations. One commenter suggested that EPA clarify that tire bladders used in the manufacturing process are not ''components integral to rubber tires.'' We agree that tire bladders are not integral components in a tire because they are used in an intermediate production process and are not found in the final product. Their manufacture does not involve the use of cements or solvents. Therefore, the final rule reflects this exclusion in § 63.5981.

2. Tire Retread Operations

Based on public comments, we reconsidered whether to include tire retread manufacturing operations in the source category definition. At the time of proposal, no major tire retread manufacturing sources were identified that would be subject to the rubber tire manufacturing rule. However, to the extent that these facilities use cements and solvents in producing retread tires, and they are a major source (standing alone or due to collocation), they would have been subject to the proposed version of the rule because of similarities in the solvents, cements, and adhesives used and the process used to build tires. In evaluating comments on this topic, we reconsidered information regarding the potential for HAP emissions from retreading operations, the applicability of the proposed rule, and the appropriateness of the tire production MACT floor for retreading operations.

In both ''new'' tire production and retread tire production, tire building stations are used to create the pre-cured or pre-vulcanized tire. Several tire components can be combined for a virgin tire versus only two to three components for a retread tire. In the latter case, the carcass has been constructed eliminating those component steps in tire building for the retreader. The vulcanizing and curing of both the retread and the ''green'' tire are identical in their use of tire molds, the time for curing, the temperatures, and the pressures. These parameters are set in order to meet the tire safety and longevity specifications of the industry.

The HAP emissions associated with sidewall cementing, tread end cementing, tire building and retread tire building all use similar cement and solvent formulations. Specifically, the main component of the cements and solvents used by both new and retread manufacturers are hexane and toluene. The primary purpose of these cements and solvents is as a temporary aid to ensure that the rubber compound surface remains ''tacky'' during tire building. However, several tire manufacturers and retreaders have reformulated or eliminated the use of these toxic compounds in their operations, while presumably still achieving the desired performance characteristics.

Our review and evaluation of the tire building methods, tire building machinery, solvent and cement usage and application, and vulcanizing and curing processes for both new and retread tire operations has not indicated

significant differences in production techniques or in the types of tires being made. Our original conclusion to include retreading in the tire production subcategory, therefore, has not changed under this subsequent analysis.

Evaluation of the tire production MACT floor database identified retreading operations at sources that also manufactured new tires. The HAP emissions associated with these facilities were minor in comparison to the overall facility emissions, and compliance with the MACT standards is anticipated using the facility-wide standards that have been established for the industry. Therefore, emissions associated with the retreading operations at facilities included in the Rubber Manufacturers Association's (RMA's) database are included in the overall emissions reported from the RMA and the individual companies.

In addition, EPA examined the 1996 National Toxics Inventory (NTI) data, which revealed only three potential stand-alone major source facilities for retreading in the U.S. The primary pollutants reported were hexane and toluene. The 1996 NTI reported that HAP emissions from these sources ranged from 8 to 16 tons per year. Subsequent contacts with the permitting agencies for these sources revealed that the facilities have significantly reduced or eliminated HAP emissions. This analysis demonstrates the ability of retread facilities to substantially reduce or eliminate their HAP emissions.

In conclusion, we believe that tread is an integral component of tires, and retread manufacturers should be subject to the emission standards for tire producers to the extent that they use cements and solvents.

3. Fabric Coating Operations

The final rule clarifies the potential overlapping applicability of MACT standards for tire manufacturers who own and operate cord-treating facilities that produce tire cord as well as other fabric products, such as belts and hoses. For example, currently we are developing the fabric printing, coating, and dyeing NESHAP, which will potentially address the same cord coating operations as today's rubber tire manufacturing rule. In order to minimize potentially redundant requirements at these types of facilities, we have included in the final rule an exemption for coating activities where the primary product is a Web substrate other than tire cord, and the activities are regulated by another NESHAP. In other words, where tire cord is the primary product, the rubber tire manufacturing NESHAP would apply. Where it is not, the other NESHAP would apply. Any facility with potential overlapping applicability would have to determine which NESHAP apply to the facility by the compliance date of the first applicable NESHAP.

4. Research and Development Operations

We have also determined that research and development (R&D) operations should not be subject to the rubber tire manufacturing rule. At proposal, we included them in the definition of HAP emission sources. However, we now believe that excluding them is more consistent with our statements in an advanced notice of proposed rulemaking in which we suggested that R&D operations should be listed as a separate source category (62 FR 25877) because including R&D operations in a rule governing manufacturing operations would be problematic. We are not aware of any stand-alone major R&D facilities. In fact, R&D is focused on development of rubber compounds, which should involve minimal solvent use. For these reasons and because R&D operations were not necessarily addressed in the MACT floor determination, the final rule exempts R&D facilities as defined in section 112(c)(7) of the CAA. An R&D facility is one ''whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.'' *See* CAA section 112(c)(7).

B. How Did We Determine MACT?

1. Rubber Processing MACT

Commenters said we did not provide data to support our conclusion that add-on control devices for rubber processing emissions are feasible but unreasonably expensive. According to the commenters, we should have considered the use of high-volume low-concentration (HVLC) technologies, which are available, proven, and cost-effective.

At proposal, we considered beyond-the-floor control options in establishing MACT for the rubber processing source category based on regenerative incineration. We concluded that the costs of these controls, more than $200,000 per ton of HAP controlled, were too high to require them as the basis of the standard. However, in considering public comments on the proposed rule, we reviewed information provided by a commenter to further evaluate the applicability of a specific HVLC technology to rubber processing operations. The technology is a hybrid system that incorporates a rotary concentrator with conventional oxidation (emission reduction) technology. The concentrator provides a mechanism to concentrate low organic concentration gas streams in order to make destruction or removal, for example, with a following oxidizer, a more cost-effective control technique.

As described in the response to comments document, our analysis showed that using the HVLC technology at a model facility would cost approximately $40,000 dollars per ton of emission reduction. While this is an improvement relative to the original cost impact, it is still too high to be considered a beyond-the-floor technology for existing and new facilities. Therefore, we have not revised the original MACT determination for this subcategory.

2. Tire Production MACT

Several commenters said the two emission limit options proposed for the tire production subcategory are not equivalent, because Option 2 (production-based option) is more stringent than Option 1 (HAP-constituent option). They said these options should be equivalent because, otherwise, Option 2 represents a beyond-the-floor requirement. At a minimum, they thought that Option 2 should be based on the average emissions of the five best-performing sources.

We disagree with these comments. As described in the proposal preamble, Option 1 represents the MACT floor and MACT. We developed Option 2 to represent a second form of the emission limit expressed in mass of HAP emitted per mass of rubber processed. Option 2 must be at least as stringent as Option 1, but is not required to be equivalent. Because the use of Option 2 is not required, it is not a beyond-the-floor requirement. Instead, it provides sources flexibility in how they meet the emission limit.

Commenters also said the proposal failed to set an emission limit with a meaningful control technology option, because the allowable emission levels in Options 1 and 2 effectively rule out control devices as a significant compliance option due to achievable capture efficiency rates in the tire production industry. This is important, commenters said, because reformulation is not an option in all cases due to the need for extensive equipment modification, modernization, and

facility reconfiguration as well as the high costs associated with such changes (likely exceeding $50 to $100 million per plant according to commenters).

A central fact in our response to these issues is that Option 1 is based on the MACT floor determination for tire production affected sources. Based on data provided by the RMA, we determined that emissions from these sources are controlled primarily through pollution prevention measures such as reformulation or other changes in process operations, which reduce or eliminate HAP. In fact, of the 41 reported existing tire production facilities, 11 reported no potential for HAP emissions from cement or solvent use above the Superfund Amendments and Reauthorization Act (SARA) de minimis reporting threshold limitations for HAP-containing compounds. No additional information in support of subcategorizing the source category was provided by the industry. Because we did not identify any basis for further subcategorizing tire production sources, this level of performance represents MACT for all tire production affected sources.

Despite a MACT floor determination based on pollution prevention, the proposed emission limits were crafted to allow the use of add-on control technologies as a compliance option because we recognized that some existing facilities currently use them to control a portion of their emissions. We also wanted to allow all sources the flexibility to use add-on controls, as long as the MACT floor requirements were met, if they found them more attractive than pollution prevention measures in reducing emissions from certain operations. We believe the result is a meaningful control technology option. While most facilities would have to achieve some increased level of pollution prevention to comply with the final rule, they would have the option to use add-on controls on any of the emission sources at the facility to provide additional needed reductions. Assuming sources used add-on controls on all of the available emission sources, the additional pollution prevention reductions to meet the emission limits would range from 0 to 54 percent, with 27 percent as the average reduction. Given the tremendous strides in pollution prevention already achieved by the industry, we believe the NESHAP limits are achievable and that the control technology option is viable.

3. Puncture Sealant MACT

Commenters said we overreached in establishing a standard for new sources that is more stringent than the standard for existing sources. The new source standard is on a single facility, which is operating a carbon absorber with a removal efficiency of 86 percent. According to commenters, we failed to conduct a beyond-the-floor analysis that includes the cost and technical feasibility to support our determination.

We determined the new source MACT floor by looking at similar sources in other industries and found that their carbon absorbers are achieving better performance than that at the one existing puncture sealant source. Industries that emit VOC have extensive experience in using pollution control technologies to control the gaseous pollutants. Carbon adsorption can typically achieve greater than 90 percent efficiencies with inlet gaseous pollutant concentrations greater than a few hundred parts per million by volume (ppmv). At concentrations greater than 1000 ppmv, efficiencies can exceed 95 percent. The existing puncture sealant facility shows an inlet stream concentration of at least 1,400 ppmv. Use of combustion technologies, even at low pollutant concentrations (less than 100 ppmv), can generally achieve 90 to 95 percent destruction efficiency. At higher concentrations, destruction efficiencies of 95 to 98 percent are achieved. Therefore, we believe that control devices at new facilities should be able to should be able to achieve at least 95 percent efficiency.

Because commenters raised cost concerns, we compared the cost of installing an 86-percent efficient control device to the cost of a 95-percent efficient control device at a new facility. Because the driving factor in the cost analysis is the airflow rate of the inlet stream, it actually costs less to install a 95-percent efficient carbon adsorber than an 86-percent efficient one. This is because both units would have the same total annual cost in the absence of recovery credits, but the more efficient device would achieve greater product recovery, which reduces the annual operating cost. Therefore, even if the standard for new sources were considered a beyond-the-floor standard, the MACT determination would be the same.

C. Can EPA Provide a Universal Certification Compliance Alternative?

Commenters asked us to develop an alternative standard (and associated compliance procedures) for tire cord production and/or puncture sealant operations that would be analogous to the ''HAP constituent option'' (Option 1) for tire production sources. They said we should allow tire cord and puncture sealant facilities to certify annually that formulations used in such operations contain less than 0.1 percent of those HAP specified in Table 16 of the proposed rule and less than 1 percent of all other HAP, and that this change would encourage pollution prevention.

We agree that providing a similar HAP-constituent option for tire cord producers and puncture sealant operations would encourage pollution prevention. Demonstrating compliance with a HAP-constituent option would require additional emission reductions beyond those required by the MACT, but since its use would be optional, it would not constitute a beyond-the-floor requirement. However, we believe that its use should be limited to a monthly compliance alternative, reserving the annual alternative to the purchase of cements and solvents. Most, if not all, tire cord manufacturers and puncture sealant application facilities mix their coatings and puncture sealants on-site, which would require the use of the monthly compliance demonstration. We have written the final rule to add these compliance options.

D. What Role Should EPA Method 311 Play in Compliance Determinations?

Commenters requested several clarifications regarding the role that EPA Method 311 (found in Appendix A of 40 CFR part 63) (Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection Into a Gas Chromatograph) should play in ongoing compliance determinations. For example, is an individual Method 311 test required to verify the HAP content for every batch of solvent or cement? Must the compliance demonstration determine the precise HAP content of the tested material, or can the de minimis reporting threshold discussed in the proposed rule (0.1 percent for certain listed HAP and 1.0 percent for other HAP) suffice? Can the tire manufacturing facility owner or operator rely on information provided by suppliers regarding the HAP content of materials? Can formulation data (material safety data sheets (MSDS) and certificates of compliance) be used in lieu of Method 311 testing? Commenters stated that use of the MSDS and other data to screen products for HAP content will eliminate testing of hundreds of non-HAP containing materials.

We reviewed the use of Method 311 in other recent coating standards we have proposed or promulgated. In order to be consistent with these standards and minimize the need for individual facilities to apply for approval of alternative methods, we have added flexibility to the process of certifying HAP contents of materials used in the

tire manufacturing industry. However, the reference test method for measuring the HAP content of tire manufacturing cements, solvents, coatings, and puncture sealants will be EPA Method 311. This is an established method that is appropriate for measuring the types of HAP used in these materials.

The final rule, therefore, does not require a Method 311 test for HAP content, nor does it require you to test every shipment of materials you receive. You will be responsible for verifying, by any reasonable means such as periodic testing or manufacturer's certification, the HAP content (at least above the de minimis thresholds) of materials used at the facility. We may require you to conduct a test at any time using EPA Method 311 (or any approved alternative method) to confirm the HAP content reported in the compliance reports. If there is any inconsistency between the results of the EPA Method 311 test and any other means of determining HAP content, the Method 311 results will govern.

E. How Should the Tire Cord Compliance Requirements Address Potential Mixing Reactions?

Commenters raised the issue of how to treat emissions from tire cord mixing operations in compliance determinations when reactions during mixing may affect emissions. For example, at what point in the mixing process should Method 311 samples (or other analytical means) be taken? If the analysis is based on the coating after it is mixed, reacted, and aged, the results will not account for the HAP emitted from or converted by the mixing process. However, if the analysis is based on coating collected from the mix tank after the addition of all the chemicals, but prior to subsequent processing, the analysis could overestimate the overall HAP emissions from the affected source. This is because tire cord coatings (''dip formulations'') commonly react during the mixing and storage operations. During these reactions, a HAP such as formaldehyde cross-links the polymers contained in the dip formulation. After this cross-linking reaction occurs, the chemical is unavailable to be released as an air emission during subsequent processing steps. For formaldehyde, the chemical conversion rate typically equals or exceeds 99 percent.

At proposal, we assumed that the amount of HAP used in the tire cord production process would equal the amount of HAP emitted. We assumed you would document your material balances using records of the HAP contents of raw materials delivered to the mixing process. Alternatively, you could sample the coating mixture to verify HAP content. However, based on comments, it appears that the issue of reactive coatings is significant for tire cord production. We are concerned, however, that the commenters' solution to only address post-mixing HAP would ignore potential fugitive emission losses from mixers.

In the final rule, we have assumed that you will base your material balance on the assumption that 100 percent of the HAP added to a coating mixture is emitted. However, you will be allowed to account for HAP ''losses'' resulting from chemical reactions, *e.g.,* curing or post-application reactions. You can calculate these losses based on the conversion rates of the individual coating formulations, chemistry demonstrations, or other demonstrations that are verifiable to the approving agency. You may than use the revised value in your compliance demonstration. We have written the final rule to add these provisions.

F. What Data Requirements Should Sources Using Continuous Parameter Monitoring Systems Meet?

1. Deviations

Commenters noted that proposed § 63.5990, which requires facilities to be in compliance with the MACT standards at all times regardless of whether a source is using control equipment to comply, fails to recognize that several factors make it almost inevitable that the source's emissions will exceed the standards at times. Instead, sources should be given a chance to quickly correct a deviation from their operating parameter limits before a violation is registered. This encourages quick action and is appropriate because emissions may be underneath the regulatory limit even though the parameter limit is exceeded.

The monitoring provisions in the final rule are structured to require a source to establish an individual operating limit (or operating parameter value) based on a site-specific performance test. Once established, the source should have the ability to operate as far as desired and/or necessary on the compliance side of the operating parameter.

The length of the averaging time for the associated emission limit is another variable that affects the likelihood of deviations. For example, cases in which the monitoring data are used to demonstrate instantaneous compliance are more likely to create the exceedances suggested by the commenters. This is not the case in the final rule. Puncture sealant affected sources meeting the overall control efficiency compliance option are subject to operating limits based on a 3-hour averaging period. Tire producers, tire cord producers, and puncture sealant applicators choosing to comply with one of the monthly average compliance options have a month in which to ensure that deviations from control device monitoring parameters do not affect their overall compliance status. In summary, we believe the final rule is based on parameters and averaging times that allow a conscientious operator to remain in compliance with the standards. Therefore, we have not made the changes suggested by commenters.

2. Startups, Shutdowns, and Malfunctions

Commenters were concerned that Table 17 to proposed subpart XXXX indicates that the 40 CFR part 63, subpart A, General Provisions requirements regarding startups, shutdowns, and malfunctions (§§ 63.6(e)(3) and (f)(1)) do not apply to sources that choose to use control devices to comply with the standards. One commenter cited precedents regarding the need for ''achievable'' standards and argued that the final rule should be written to indicate that these sections do apply to facilities complying through the use of control devices.

We agree that puncture sealant affected sources that are subject to operating limits should be allowed to use the startup, shutdown, and malfunction provisions, and have corrected this oversight for the final rule. We separately considered whether to extend these provisions to tire production, tire cord production, and puncture sealant affected sources complying with the monthly average compliance options because compliance with the monitored parameter is only a trigger that determines whether the source can use the established emission reductions of the capture and control system in the compliance demonstration. Because the overall compliance demonstration is based on a month's worth of data, we considered whether the startup, shutdown, and malfunction provisions were needed to ensure an achievable standard. We determined that for sources relying heavily on the use of control equipment to meet the overall emission limit, the inability to exclude periods of startups, shutdowns, and malfunctions from the compliance demonstration could increase their risk of failing to comply with the emission limit. Therefore, we have written the final rule to add the startup, shutdown, and malfunction

provisions for sources complying with the standards through control devices.

3. Minimum Data Collection Requirements

Commenters said the proposal fails to allow for the loss of even minimal amounts of test or monitoring data when sources are complying by using add-on control devices. They suggested adding provisions similar to those found in the municipal waste combuster MACT standards issued under section 129 of the CAA.

We have therefore written the final rule to provide information on these minimum data requirements. We agree that the proposed rule, by being silent on minimum data requirements, could have caused confusion for compliance demonstrations. The tradeoff to consider in adding these requirements is that the monitoring system should be optimized to limit occurrences when data collection is jeopardized because of system faults and failures. Therefore, we have clarified in the final rule the establishment of reasonable minimum data collection requirements, implemented through the use of a site-specific monitoring plan designed to optimize system performance.

The final rule requires you, for each operating parameter you monitor, to install, operate, and maintain each continuous parameter monitoring system (CPMS) according to the following requirements:

- Operate CPMS at all times the process is operating;
- Collect data from at least four equally spaced periods each hour;
- For at least 75 percent of the hours in an operating day, have valid data (as defined in the site-specific monitoring plan) for at least four equally spaced periods each hour;
- For each hour of valid data from at least four equally spaced periods, calculate the hourly average value using all valid data;
- Calculate the daily average using all of the hourly averages; and
- Record the results for each inspection, calibration, and validation check as specified in the site-specific monitoring plan.

For each monitoring system required, you must develop and submit for approval a site-specific monitoring plan that addresses the following requirements:

- Installation of the continuous monitoring system (CMS) sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last control device);
- Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and
- Performance evaluation procedures and acceptance criteria (*e.g.,* calibrations).

The plan must also address the following ongoing procedures:

- Ongoing operation and maintenance procedures in accordance with the general requirements of 40 CFR 63.8(c)(1), (3), (4)(ii), (7), and (8), and 63.5990;
- Ongoing data quality assurance procedures in accordance with the general requirements of 40 CFR 63.8(d); and
- Ongoing recordkeeping and reporting procedures in accordance the general requirements of 40 CFR 63.10(c) and (e)(1) and (2)(i).

G. Is Compliance Based on Daily Recordkeeping Needed?

Commenters recommended specifying that monthly average compliance demonstrations should be based on monthly inventory and usage records, instead of daily ones, for several reasons:

- The proposal to require daily records of many parameters (control devices are the exception) is inconsistent with the requirement for a monthly average, is very burdensome, and would not serve any environmental purpose.
- Use of monthly data would eliminate the need for proposed equation 3 of § 63.5997(b)(3) of proposed subpart XXXX.
- Monthly records are consistent with other MACT standards, and it would be arbitrary and capricious to single out the tire manufacturing standards for daily recordkeeping when it is unnecessary to show compliance with a monthly averaging period, and other similar standards require only monthly recordkeeping.
- Monitoring the flow of cements and solvents through the plant's central dispensing area on a monthly basis is less burdensome than on a daily basis.
- The accuracy of a monthly system is significantly better than individual measurements of hundreds of containers on a daily basis.

We believe the commenters have overstated the need for complex recordkeeping systems to implement the rule as proposed. For example, we believe sources could monitor daily flow of cements and solvents through one or two central locations instead of at the point of use. However, upon consideration, we agree that a monthly system of cement, solvent, and coating use is sufficient to demonstrate compliance with the emission limitations. Therefore, we have written the final rule to implement a monthly system. This change simplifies the compliance equations and should reduce recordkeeping burden without compromising compliance assurance.

H. Has EPA Properly Considered the Cost Impacts of the Rule?

Commenters felt we underestimated the cost impacts of the proposed rule by failing to incorporate significant costs associated with creating systems to track daily material usage. They suggested that monthly recordkeeping would be more economical, could be more easily maintained, and would still demonstrate compliance with the standards.

We believe that the commenters misinterpreted the proposed recordkeeping requirements to require tracking cement, solvent, and coating use at every single step in the process. Instead, we believe facilities should be able to monitor a limited number of central locations (*e.g.,* amount of coating leaving mix area, amount of solvent distributed from storage), and thereby avoid significant costs. However, as described above, we have determined that monthly recordkeeping will be sufficient to demonstrate compliance with the emission limitations and have written the final rule to allow it.

Commenters also were concerned that we presented the proposed rule as a nonsignificant regulatory action, when it may force technology developments that are not incorporated into the analysis presented. Commenters said reformulation is not an option in every case, and the lack of a meaningful control technology option will force significant technology upgrades to comply with the standards. According to one commenter, this type of modernization costs $50 to $100 million per plant, and these types of costs are not reflected in the impacts analysis of the proposed rule.

As earlier described, we believe the rule contains a viable emission control technology option. In addition to the cost estimate prepared for the final rule, we also conducted a theoretical cost analysis using more conservative (*i.e.,* high-end) assumptions regarding the level of reformulation and the probable capture efficiencies. That analysis maximized the number of sources installing add-on control devices, reduced add-on control capture efficiencies, and determined solvent

reformulation costs on a facility-specific basis. (See the response to comments document for more details.) Based on these assumptions, total annual control costs to all tire producers combined could be as high as $35 million. Even considering impacts based on these more conservative (higher end of range) assumptions, the final rule will not trigger the $100 million criterion used by the Office of Management and Budget (OMB), let alone approach the estimate provided by one commenter of $50 to $100 million per plant to meet the emission limits.

I. What Other Changes Has EPA Made for the Final Rule?

We have made several other changes for the final rule. These changes include the following:

- Changes to the compliance equations to clarify them, address the addition of new compliance options, make them consistent with monthly recordkeeping, and fix errors.
- Revisions or additions to clarify applicability in definitions (cements and solvents, fabric processed, tire cord, *etc.*).
- Other minor changes to correct editorial and minor technical errors in the proposal package.

J. What Are the Environmental, Cost, and Economic Impacts of the Final Rule?

The final rule will eliminate approximately 983 megagrams per year (Mg/yr) (1,084 tons/yr) (52 percent) of the baseline annual HAP emissions from this industry. For the tire production source subcategory, we estimate that the final rule will reduce HAP emissions by approximately 949 Mg/yr (1,047 tons/yr). For the tire cord production source subcategory, we estimate that the final rule will reduce HAP emissions by approximately 34 Mg/yr (37 tons/yr). We also estimate that the final rule will reduce emissions of VOC by the same amount.

For the one existing puncture sealant application affected source, we are not requiring different emissions control than what is currently done. Therefore, the final rule will not reduce HAP or other emissions from baseline emissions levels at this facility.

The final rule encourages the adoption of pollution prevention measures. As a result, we believe that most manufacturers will adopt these measures and expect minimal, if any, increases in energy consumption, and minimal reductions in water pollution and solid waste.

Actual compliance costs will depend on each source's existing cement, solvent, and coating formulations and control equipment, and the modifications made to comply with the final rule. Table 2 shows the total annual costs for affected sources to comply with the final rule. These costs include the estimated costs of reformulating cements, solvents, and coatings or installation of add-on control devices, as well as monitoring, reporting, and recordkeeping costs.

TABLE 2.—TOTAL ANNUAL COSTS OF THE RUBBER TIRE MANUFACTURING RULE FOR TIRE PRODUCTION, TIRE CORD PRODUCTION, AND PUNCTURE SEALANT APPLICATION

Annual costs	Tire production/puncture sealant application [a]	Tire cord	
Control	$21,359,000	$2,477,000	
Monitoring	1,161,000	193,000	
Recordkeeping and reporting average	597,000	105,000	
Total nationwide costs	23,117,000	2,775,000	=$25,892,000

[a] Puncture sealant monitoring and reporting recordkeeping costs are included in the tire production costs.

The economic impact analysis (EIA) provides an estimate of the anticipated regulatory impacts of the rule for rubber tire manufacturing. The information collected for this rule from rubber tire manufacturers indicates that there are 14 companies potentially affected by the rule. States with the largest concentration of facilities are Alabama, Illinois, North Carolina, South Carolina, and Ohio. None of the facilities manufacturing rubber tires are owned by companies that are classified as small businesses.

In general, the economic impacts of the rule are expected to be minimal. A market price increase of less than 1 percent, or $0.03 per tire, is projected. Domestic producer pre-tax earnings are projected to decrease by $14 million, or 1.2 percent. The EIA estimates that domestic tire output will decline by 154,000 tires (0.05 percent), while imports will increase by 24,000 tires (0.05 percent), resulting in a net decline of 130,000 tires, or 0.04 percent.

The value of a regulatory action is traditionally measured by the change in economic welfare that it generates. The final rule's welfare impacts, or the social costs required to achieve environmental improvements, will extend to tire consumers and producers alike. The social costs for existing sources are projected to be approximately $24 million.

IV. Administrative Requirements

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health

Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives that we considered.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

C. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This is because no tribal governments own or operate a rubber tire manufacturing facility. Thus, Executive Order 13175 does not apply to this rule.

D. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in Executive Order 13132. The standards apply only to rubber tire manufacturers and do not pre-exempt States from adopting more stringent standards or otherwise regulate State or local governments. Thus, Executive Order 13132 does not apply to this final rule.

Although section 6 of Executive Order 13132 does not apply to this final rule, EPA did consult with State and local officials in developing this final rule. No concerns were raised by these officials during this consultation.

E. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative with other than the least costly, most cost-effective, or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of this rule for any year has been estimated to be less than $26 million. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, we have determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, this final rule is not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses,

small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) size standards by NAICS code (which ranges from 500 to 1,000 employees for the rubber tire manufacturing industry); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. We have determined that none of the 43 facilities expected to be subject to the final rule are small entities.

H. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1982.01), and a copy may be obtained from Ms. Sandy Farmer by mail at the U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001, by e-mail at *farmer.sandy@epa.gov,* or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The final information requirements are based on notifications, records, and reports required by the General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized under section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made will be safeguarded according to Agency policies in 40 CFR part 2, subpart, Confidentiality of Business Information.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the promulgated rule) is estimated to total 12,807 labor hours per year at a total annual cost of $701,337. This estimate includes notifications, a performance test and report for sources using control devices to comply with the regulation, semiannual compliance reports, annual compliance certifications, records of cements and solvents composition, records of cements and solvents use, records of HAP use, and records of any required parameter monitoring.

The total estimated annual and capital monitoring, inspection, reporting and recordkeeping (MIRR) costs for existing and new major sources to comply with the final standards when an affected source opts to comply via the use of add-on control equipment are determined based on the estimated capital costs of equipment required for MIRR activities. For the rubber tire manufacturing industry, the total estimated installed capital costs of this equipment is $2.9 million for existing major sources and $569,558 for new major sources. Annualized capital MIRR costs for existing and new major sources to comply with the final standards through the use of add-on controls were estimated to be $1.6 million and $220,386, respectively.

The total annual estimated operating and maintenance costs (O&M) were calculated based on: (1) The estimated storage, filing, photocopying, and postage costs for the estimated total annual responses associated with the provisions of the rubber tire rule; and (2) the O&M costs for the equipment required for compliance with these standards. The total storage, filing, photocopying, and postage cost per response was $20.67, for an annual estimated average of $1,778.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; process and maintain information and disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The OMB control number(s) for the information collection requirements in this rule will be listed in an amendment to 40 CFR part 9 or 48 CFR chapter 15 in a subsequent **Federal Register** document after OMB approves the ICR.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104–113, section 12(d) 15 U.S.C. 272 note) directs us to use voluntary consensus standards (VCS) in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs us to provide Congress, through annual reports to OMB, with explanations when we do not use available and applicable VCS.

This rulemaking involves technical standards. We are citing the following methods in this rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 25, and 25A of 40 CFR part 60, appendix A; EPA Methods 204 and 204A–F of 40 CFR part 51, appendix M; and EPA Method 311 of 40 CFR part 63, appendix A. Consistent with the NTTAA, we conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204A–F, and 311. The search and review results have been documented and are placed in the docket (A–97–14) for this rule.

Five voluntary consensus standards: ASTM D1979–97, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS 9–94 are already incorporated by reference in EPA Method 311.

The search for emissions measurement procedures identified 14 other VCS. We determined that 11 of these 14 VCS identified for measuring emissions of HAP or surrogates subject to emission standards in this rule were impractical alternatives to EPA test methods for the purposes of this rule. Therefore, we do not intend to adopt these VCS. The reasons for the determinations of these 11 VCS are discussed below.

The VCS ASTM D3154–91 ''Standard Method for Average Velocity in a Duct (Pitot Tube Method),'' is an impractical

alternative to EPA Methods 1, 2, 2C, 3, 3B, and 4 for the purposes of this rulemaking because it lacks in quality control and quality assurance requirements. Specifically, ASTM D3154–91 (1995) does not include the following: (1) Proof that openings of standard pitot tubes have not plugged during the test; (2) if differential pressure gauges other than inclined manometers (*e.g.,* magnehelic gauges) are used, their calibration must be checked after each test series; and (3) the frequency and validity range for calibration of the temperature sensors.

The VCS ISO 10780:1994, ''Stationary Source Emissions—Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts,'' is impractical as an alternative to EPA Method 2 in this rulemaking. This standard, ISO 10780:1994, recommends the use of L-shaped pitots, which historically have not been recommended because the S-type design has large openings which are less likely to plug up with dust.

The VCS ASTM D3464–96 (2001), ''Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer,'' is impractical as an alternative to EPA Method 2 for the purposes of this rulemaking primarily because applicability specifications are not clearly defined, *e.g.,* range of gas composition, temperature limits. Also, the lack of supporting quality assurance data for the calibration procedures and specifications, and certain variability issues that are not adequately addressed by the standard limit our ability to make a definitive comparison of the method in these areas.

Two very similar standards, ASTM D5835–95, ''Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration,'' and ISO 10396:1993, ''Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations,'' are impractical alternatives to EPA Method 3A for the purposes of this rulemaking because they lack in detail and quality assurance/quality control requirements. Specifically, these two standards do not include the following: (1) Sensitivity of the method; (2) acceptable levels of analyzer calibration error; (3) acceptable levels of sampling system bias; (4) zero drift and calibration drift limits, time span, and required testing frequency; (5) a method to test the interference response of the analyzer; (6) procedures to determine the minimum sampling time per run and minimum measurement time; and (7) specifications for data recorders, in terms of resolution (all types) and recording intervals (digital and analog recorders, only).

Two VCS, EN 12619:1999 ''Stationary Source Emissions-Determination of the Mass Concentration of Total Gaseous Organic Carbon at Low Concentrations in Flue Gases—Continuous Flame Ionization Detector Method'' and ISO 14965:2000(E) ''Air Quality-Determination of Total Nonmethane Organic Compounds-Cryogenic Preconcentration and Direct Flame Ionization Method,'' are impractical alternatives to EPA Method 25A for the purposes of this rulemaking because the standards do not apply to solvent process vapors in concentrations greater than 40 ppm carbon for EN 12619 and 10 ppm carbon for ISO 14965. Methods whose upper limits are this low are too limited to be useful in measuring source emissions, which are expected to be much higher.

Four VCS are impractical alternatives to EPA test methods for the purposes of this rulemaking because they are too general, too broad, or not sufficiently detailed to assure compliance with EPA regulatory requirements: ASTM D3796–90 (Reapproved 1996), ''Standard Practice for Calibration of Type S Pitot Tubes,'' for EPA Method 2; ASME C00031 or PTC 19–10–1981—Part 10, ''Flue and Exhaust Gas Analyses,'' for EPA Method 3; CAN/CSA Z223.2–M86(1986), ''Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams,'' for EPA Method 3A; and ASTM E337–84 (Reapproved 1996), ''Standard Test Method for Measuring Humidity with a Psychrometer (the Measurement of Wet- and Dry-Bulb Temperatures),'' for EPA Method 4.

Three of the 14 VCS identified in this search were not available at the time the review was conducted for the purposes of this rulemaking because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2; and ISO/DIS 12039, ''Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods,'' for EPA Method 3A.

Sections 63.5993, 63.5994, 63.5997, and 63.6000 to subpart XXXX list the EPA testing methods in the final rule. Under 40 CFR 63.8 of subpart A of the General Provisions, a source may apply to obtain permission to use alternative monitoring in place of any of the EPA testing methods.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on July 9, 2002.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Rubber tire manufacturing.

Dated: May 15, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart XXXX to read as follows:

Subpart XXXX—National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing

Sec.

What This Subpart Covers

Emission Limits for Tire Production Affected Sources

Subpart XXXX—National Emissions Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing

What This Subpart Covers

§ 63.5980 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for rubber tire manufacturing. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.5981 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a rubber tire manufacturing facility that is located at, or is a part of, a major source of hazardous air pollutant (HAP) emissions.

(1) Rubber tire manufacturing includes the production of rubber tires and/or the production of components integral to rubber tires, the production of tire cord, and the application of puncture sealant. Components of rubber tires include, but are not limited to, rubber compounds, sidewalls, tread, tire beads, tire cord and liners. Other components often associated with rubber tires but not integral to the tire, such as wheels, inner tubes, tire bladders, and valve stems, are not components of rubber tires or tire cord and are not subject to this subpart.

(2) A major source of HAP emissions is any stationary source or group of stationary sources within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or

any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

(b) You are not subject to this subpart if the affected source at your rubber tire manufacturing facility meets either of the conditions described in paragraph (b)(1) or (2) of this section.

(1) You own or operate a tire cord production affected source, but the primary product produced at the affected source is determined to be subject to another subpart under this part 63 as of the effective date of that subpart (publication date of the final rule) or startup of the source, whichever is later. In this case, you must determine which subpart applies to your source and you must be in compliance with the applicable subpart by the compliance date of that subpart. The primary product is the product that is produced for the greatest operating time over a 5-year period, based on expected utilization for the 5 years following the compliance date or following initial startup of the source, whichever is later.

(2) Your rubber tire manufacturing affected source is a research and development facility whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.

§ 63.5982 What parts of my facility does this subpart cover?

(a) This subpart applies to each existing, new, or reconstructed affected source at facilities engaged in the manufacture of rubber tires or their components.

(b) The affected sources are defined in paragraph (b)(1) of this section (tire production), paragraph (b)(2) of this section (tire cord production), paragraph (b)(3) of this section (puncture sealant application), and paragraph (b)(4) of this section (rubber processing).

(1) The tire production affected source is the collection of all processes that use or process cements and solvents as defined in § 63.6015, located at any rubber tire manufacturing facility. It includes, but is not limited to: Storage and mixing vessels and the transfer equipment containing cements and/or solvents; wastewater handling and treatment operations; tread and cement operations; tire painting operations; ink and finish operations; undertread cement operations; process equipment cleaning materials; bead cementing operations; tire building operations; green tire spray operations; extruding, to the extent cements and solvents are used; cement house operations; marking operations; calendar operations, to the extent solvents are used; tire striping operations; tire repair operations; slab dip operations; other tire building operations, to the extent that cements and solvents are used; and balance pad operations.

(2) The tire cord production affected source is the collection of all processes engaged in the production of tire cord. It includes, but is not limited to: dipping operations, drying ovens, heat-set ovens, bulk storage tanks, mixing facilities, general facility vents, air pollution control devices, and warehouse storage vents.

(3) The puncture sealant application affected source is the puncture sealant application booth operation used to apply puncture sealant to finished tires.

(4) The rubber processing affected source is the collection of all rubber mixing processes (e.g., banburys and associated drop mills) that either mix compounds or warm rubber compound before the compound is processed into components of rubber tires. The mixed rubber compound itself is also included in the rubber processing affected source. There are no emission limitations or other requirements for the rubber processing affected source.

(c) An affected source is a new affected source if construction of the affected source commenced after October 18, 2000, and it met the applicability criteria of § 63.5981 at the time construction commenced.

(d) An affected source is reconstructed if it meets the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.5983 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, except as provided in §§ 63.5982(b)(4) and 63.5981(b)(1), you must comply with the emission limitations for new and reconstructed sources in this subpart upon startup.

(b) If you have an existing affected source, you must comply with the emission limitations for existing sources no later than July 11, 2005.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, the affected source(s) must be in compliance with existing source emission limitations no later than 3 years after the date on which the area source became a major source.

(d) You must meet the notification requirements in § 63.6009 according to the schedule in § 63.6009 and in subpart A of this part. Some of the notifications must be submitted before the date you are required to comply with the emission limitations in this subpart.

Emission Limits for Tire Production Affected Sources

§ 63.5984 What emission limits must I meet for tire production affected sources?

You must meet each emission limit in either option 1 or option 2 of Table 1 to this subpart that applies to you.

§ 63.5985 What are my alternatives for meeting the emission limits for tire production affected sources?

You must use one of the compliance alternatives in paragraphs (a) through (c) of this section to meet either of the emission limits in § 63.5984.

(a) *Purchase alternative.* Use only cements and solvents that, as purchased, contain no more HAP than allowed by the emission limits in Table 1 to this subpart, option 1 (HAP constituent option).

(b) *Monthly average alternative, without using an add-on control device.* Use cements and solvents in such a way that the monthly average HAP emissions do not exceed the emission limits in Table 1 to this subpart, option 1 or option 2.

(c) *Monthly average alternative, using an add-on control device.* Use a control device to reduce HAP emissions so that the monthly average HAP emissions do not exceed the emission limits in Table 1 to this subpart, option 1 or option 2.

Emission Limits for Tire Cord Production Affected Sources

§ 63.5986 What emission limits must I meet for tire cord production affected sources?

You must meet each emission limit in either option 1 or option 2 of Table 2 to this subpart that applies to you.

§ 63.5987 What are my alternatives for meeting the emission limits for tire cord production affected sources?

You must use one of the compliance alternatives in paragraph (a) or (b) of this section to meet the emission limits in § 63.5986.

(a) *Monthly average alternative, without using an add-on control device.* Use coatings in such a way that the monthly average HAP emissions do not exceed the emission limits in Table 2 to this subpart.

(b) *Monthly average alternative, using an add-on control device.* Use a control device to reduce HAP emissions so that the monthly average HAP emissions do not exceed the emission limits in Table 2 to this subpart.

Emission Limitations for Puncture Sealant Application Affected Sources

§ 63.5988 What emission limitations must I meet for puncture sealant application affected sources?

(a) You must meet each emission limit in either option 1 or option 2 of Table 3 to this subpart that applies to you.

(b) If you use an add-on control device to meet the emission limits in Table 3 to this subpart, you must also meet each operating limit in Table 4 to this subpart that applies to you.

§ 63.5989 What are my alternatives for meeting the emission limitations for puncture sealant application affected sources?

You must use one of the compliance alternatives in paragraphs (a) through (d) of this section to meet the emission limitations in § 63.5988.

(a) *Overall control efficiency alternative.* Use an emissions capture system and control device and demonstrate that the application booth emissions meet the emission limits in Table 3 to this subpart, option 1a or 1b, and the control device and capture system meet the operating limits in Table 4 to this subpart.

(b) *Permanent total enclosure and control device efficiency alternative.* Use a permanent total enclosure that satisfies the Method 204 criteria in 40 CFR part 51, appendix M. Demonstrate that the control device meets the emission limits in Table 3 to this subpart, option 1a or 1b. You must also show that the control device and capture system meet the operating limits in Table 4 to this subpart.

(c) *Monthly average alternative, without using an add-on control device.* Use puncture sealants in such a way that the monthly average HAP emissions do not exceed the emission limits in Table 3 to this subpart, option 2.

(d) *Monthly average alternative, using an add-on control device.* Use a control device to reduce HAP emissions so that monthly average HAP emissions do not exceed the emission limits in Table 3 to this subpart, option 2.

General Compliance Requirements

§ 63.5990 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the applicable emission limitations specified in Tables 1 through 4 to this subpart at all times, except during periods of startup, shutdown, and malfunction if you are using a control device to comply with an emission limit.

(b) Except as provided in § 63.5982(b)(4), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) During the period between the compliance date specified for your source in § 63.5983 and the date upon which continuous compliance monitoring systems (CMS) have been installed and validated and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emission control equipment.

(d) For each affected source that complies with the emission limits in Tables 1 through 3 to this subpart using a control device, you must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

(e) For each monitoring system required in this section, you must develop and submit for approval a site-specific monitoring plan that addresses the requirements in paragraphs (e)(1) through (3) of this section as follows:

(1) Installation of the CMS sampling probe or other interface at a measurement location relative to each affected process unit so that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and

(3) Performance evaluation procedures and acceptance criteria (*e.g.,* calibrations).

(f) In your site-specific monitoring plan, you must also address the ongoing procedures specified in paragraphs (f)(1) through (3) of this section as follows:

(1) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (3), (4)(ii), (7), and (8), and this section;

(2) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(3) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

General Testing and Initial Compliance Requirements

§ 63.5991 By what date must I conduct an initial compliance demonstration or performance test?

(a) If you have a new or reconstructed affected source, you must conduct each required initial compliance demonstration or performance test within 180 calendar days after the compliance date that is specified for your new or reconstructed affected source in § 63.5983(a). If you are required to conduct a performance test, you must do so according to the provisions of § 63.7(a)(2).

(b) If you have an existing affected source, you must conduct each required initial compliance demonstration or performance test no later than the compliance date that is specified for your existing affected source in § 63.5983(b). If you are required to conduct a performance test, you must do so according to the provisions of § 63.7(a)(2).

(c) If you commenced construction or reconstruction between October 18, 2000 and July 9, 2002, you must demonstrate initial compliance with either the proposed emission limitations or the promulgated emission limitations no later than January 6, 2003, or within 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(d) If you commenced construction or reconstruction between October 18, 2000 and July 9, 2002, and you chose to comply with the proposed emission limitation when demonstrating initial compliance, you must conduct a second compliance demonstration for the promulgated emission limitation no later than January 5, 2006, or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

§ 63.5992 When must I conduct subsequent performance tests?

If you use a control system (add-on control device and capture system) to meet the emission limitations, you must also conduct a performance test at least once every 5 years following your initial compliance demonstration to verify control system performance and reestablish operating parameters or operating limits for control systems used to comply with the emissions limits.

§ 63.5993 What performance tests and other procedures must I use?

(a) If you use a control system to meet the emission limitations, you must conduct each performance test in Table 5 to this subpart that applies to you.

(b) Each performance test must be conducted according to the requirements in § 63.7(e)(1) and under the specific conditions specified in Table 5 to this subpart.

(c) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(d) You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(1), unless otherwise specified in the test method. Each test run must last at least 1 hour.

(e) If you are complying with the emission limitations using a control system, you must also conduct performance tests according to the requirements in paragraphs (e)(1) through (3) of this section as they apply to you.

(1) *Determining capture efficiency of permanent or temporary total enclosure.* Determine the capture efficiency of a capture system by using one of the procedures in Table 5 to this subpart.

(2) *Determining capture efficiency of an alternative method.* As an alternative to constructing a permanent or temporary total enclosure, you may determine the capture efficiency using any capture efficiency protocol and test methods if the data satisfy the criteria of either the Data Quality Objective or the Lower Confidence Limit approach in appendix A to subpart KK of this part.

(3) *Determining efficiency of an add-on control device.* Use Table 5 to this subpart to select the test methods for determining the efficiency of an add-on control device.

Testing and Initial Compliance Requirements for Tire Production Affected Sources

§ 63.5994 How do I conduct tests and procedures for tire production affected sources?

(a) *Methods to determine the mass percent of HAP in cements and solvents.* To determine the HAP content in the cements and solvents used at your tire production affected source, use EPA Method 311 of appendix A of this part, an approved alternative method, or any other reasonable means for determining the HAP content of your cements and solvents. Other reasonable means include, but are not limited to: a material safety data sheet (MSDS), provided it contains appropriate information; a certified product data sheet (CPDS); or a manufacturer's hazardous air pollutant data sheet. You are not required to test the materials that you use, but the Administrator may require a test using EPA Method 311 (or an approved alternative method) to confirm the reported HAP content. If the results of an analysis by EPA Method 311 are different from the HAP content determined by another means, the EPA Method 311 results will govern compliance determinations.

(b) *Methods to demonstrate compliance with the HAP constituent emission limits in Table 1 to this subpart (option 1).* Use the method in paragraph (b)(1) of this section to demonstrate initial and continuous compliance with the applicable emission limits for tire production affected sources using the compliance alternative described in § 63.5985(a), purchase alternative. Use the equations in paragraphs (b)(2) and (3) of this section to demonstrate initial and continuous compliance with the emission limits for tire production affected sources using the monthly average compliance alternatives described in § 63.5985(b) and (c).

(1) Determine the mass percent of each HAP in each cement and solvent according to the procedures in paragraph (a) of this section.

(2) Use Equation 1 of this section to calculate the HAP emission rate for each monthly operating period when complying by using cements and solvents without using an add-on control device so that the monthly average HAP emissions do not exceed the HAP constituent emission limits in Table 1 to this subpart, option 1. Equation 1 follows:

$$E_{month} = \frac{\left(\sum_{i=1}^{n}(HAP_i)(TMASS_i)\right)(10^6)}{\sum_{i=1}^{n} TMASS_i} \qquad \text{(Eq. 1)}$$

Where:

E_{month}=mass of the specific HAP emitted per total mass cements and solvents from all cements and solvents used in tire production per month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of the specific HAP in cement and solvent i, as purchased, determined in accordance with paragraph (a) of this section.

$TMASS_i$=total mass of cement and solvent i used in the month, grams.

n=number of cements and solvents used in the month.

(3) Use Equation 2 of this section to calculate the HAP emission rate for each monthly period when complying by using a control device to reduce HAP emissions so that the monthly average HAP emissions do not exceed the HAP constituent emission limits in Table 1 to this subpart (option 1). Equation 2 follows:

$$E_{month} = \frac{\left\{\sum_{i=1}^{n}(HAP_i)(TMASS_i) + \sum_{j=1}^{m}(HAP_j)(TMASS_j)\left(1 - \frac{EFF}{100}\right) + \sum_{k=1}^{p}(HAP_k)(TMASS_k)\right\}(10^6)}{\sum_{i=1}^{n} TMASS_i + \sum_{j=1}^{m} TMASS_j + \sum_{k=1}^{p} TMASS_k} \qquad \text{(Eq. 2)}$$

Where:

E_{month}=mass of the specific HAP emitted per total mass cements and solvents from all cements and solvents used in tire production per month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of the specific HAP in cement and solvent i, as purchased, determined in accordance with paragraph (a) of this section for cements and solvents used in the month in processes that are not routed to a control device.

$TMASS_i$=total mass of cement and solvent i used in the month in processes that are not routed to a control device, grams.

n=number of cements and solvents used in the month in processes that are not routed to a control device.

HAP_j=mass percent, expressed as a decimal, of the specific HAP in cement and solvent j, as purchased, determined in accordance with paragraph (a) of this section, for cements and solvents used in the month in

processes that are routed to a control device during operating days, which are defined as days when the control system is operating within the operating range established during the performance test and when monitoring data are collected.

$TMASS_j$=total mass of cement and solvent j used in the month in processes that are routed to a control device during all operating days, grams.

EFF=efficiency of the control system determined during the performance test (capture system efficiency multiplied by the control device efficiency), percent.

m=number of cements and solvents used in the month that are routed to a control device during all operating days.

HAP_k=mass percent, expressed as a decimal, of the specific HAP in cement and solvent k, as purchased, for cements and solvents used in the month in processes that are routed to a control device during non-control operating days, which are defined as days when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected.

$TMASS_k$=total mass of cement and solvent k used in the month in processes that are routed to a control device during all non-control operating days, grams.

p=number of cements and solvents used in the month that are routed to a control device during all non-control operating days.

(4) Each monthly calculation is a compliance demonstration for the purpose of this subpart.

(c) *Methods to demonstrate compliance with the production-based emission limits in Table 1 to this subpart, option 2.* Use the methods and equations in paragraphs (c)(1) through (6) of this section to demonstrate initial and continuous compliance with the production-based emission limits for tire production affected sources using the compliance alternatives described in § 63.5985(b) and (c).

(1) *Methods to determine the mass percent of each HAP in cements and solvents.* Determine the mass percent of all HAP in cements and solvents using the applicable methods specified in paragraph (a) of this section.

(2) *Quantity of rubber used.* Determine your quantity of rubber used (megagrams) by accounting for the total mass of mixed rubber compound that is delivered to the tire production operation.

(3) *Compliance without use of an add-on control device.* If you do not use an add-on control device to meet the emission limits, use Equation 3 of this section to calculate the monthly HAP emission rate in grams of HAP emitted per megagram of rubber used, using the quantity of rubber used per month (megagrams), as determined in paragraph (c)(2) of this section so that the monthly average HAP emission does not exceed the HAP emission limit in Table 1 to this subpart, option 2. Equation 3 follows:

$$E_{month} = \frac{\sum_{i=1}^{n}(HAP_i)(TMASS_i)}{RMASS} \quad \text{(Eq. 3.)}$$

Where:

E_{month}=mass of all HAP emitted per total mass of rubber used month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of all HAP in cement and solvent i, as purchased, determined in accordance with paragraph (a) of this section.

$TMASS_i$=total mass of cement and solvent i used in the month, grams.

n=number of cements and solvents used in the month.

RMASS=total mass of rubber used per month, megagrams.

(4) *Compliance with use of an add-on control device.* If you use a control device to meet the emission limits, use Equation 4 of this section to calculate the monthly HAP emission rate in grams of HAP emitted per megagram of rubber used, using the quantity of rubber used per month (megagrams), as determined in paragraph (c)(2) of this section so that the monthly average HAP emission does not exceed the HAP emission limit in Table 1 of this subpart, option 2. Equation 4 follows:

$$E_{month} = \frac{\sum_{i=1}^{n}(HAP_i)(TMASS_i) + \sum_{j=1}^{m}(HAP_j)(TMASS_j)\left(1-\frac{EFF}{100}\right) + \sum_{k=1}^{p}(HAP_k)(TMASS_k)}{RMASS} \quad \text{(Eq. 4)}$$

Where:

E_{month}=mass of all HAP emitted per total mass rubber used per month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of all HAP in cement and solvent i, as purchased, determined in accordance with paragraph (a) of this section for cements and solvents used in the month in processes that are not routed to a control device.

$TMASS_i$=total mass of cement and solvent i used in the month in processes that are not routed to a control device, grams.

n=number of cements and solvents used in the month in processes that are not routed to a control device.

HAP_j=mass percent, expressed as a decimal, of all HAP in cement and solvent j, as purchased, determined in accordance with paragraph (a) of this section, for cements and solvents used in the month in processes that are routed to a control device during operating days, which are defined as days when the control system is operating within the operating range established during the performance test and when monitoring data are collected.

$TMASS_j$=total mass of cement and solvent j used in the month in processes that are routed to a control device during all operating days.

EFF=efficiency of the control system determined during the performance test (capture system efficiency multiplied by the control device efficiency), percent.

m=number of cements and solvents used in the month that are routed to a control device during all operating days.

HAP_k=mass percent, expressed as a decimal, of the specific HAP in cement and solvent k, as purchased, for cements and solvents used in the month in processes that are routed to a control device during non-control operating days, which are defined as days when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected.

$TMASS_k$=total mass of cement and solvent k used in the month in processes that are routed to a control device during all non-control operating days, grams.

p=number of cements and solvents used in the month that are routed to a control device during all non-control operating days.

RMASS=total mass of rubber used per month, megagrams.

(5) Each monthly calculation is a compliance demonstration for the purpose of this subpart.

(d) *Specific compliance demonstration requirements for tire production affected sources.* (1) Conduct any required compliance demonstration according to the requirements in § 63.5993.

(2) If you are demonstrating compliance with the HAP constituent option in Table 1 to this subpart, option 1, conduct the compliance demonstration using cements and solvents that are representative of cements and solvents typically used at your tire production affected source.

(3) Establish an operating range that corresponds to the control efficiency as described in Table 5 to this subpart.

(e) *How to take credit for HAP emissions reductions from add-on control devices.* If you want to take credit in Equations 2 and 4 of this

section for HAP emissions reduced using a control system, you must meet the requirements in paragraphs (e)(1) and (2) of this section.

(1) Monitor the established operating parameters as appropriate.

(i) If you use a thermal oxidizer, monitor the firebox secondary chamber temperature.

(ii) If you use a carbon adsorber, monitor the total regeneration stream mass or volumetric flow for each regeneration cycle, and the carbon bed temperature after each regeneration, and within 15 minutes of completing any cooling cycle.

(iii) If you use a control device other than a thermal oxidizer or a regenerative carbon adsorber, install and operate a continuous parameter monitoring system according to your site-specific performance test plan submitted according to § 63.7(c)(2)(i).

(iv) If you use a permanent total enclosure, monitor the face velocity across the natural draft openings (NDO) in the enclosure. Also, if you use an enclosure, monitor to ensure that the sizes of the NDO have not changed, that there are no new NDO, and that a HAP emission source has not been moved closer to an NDO since the last compliance demonstration was conducted.

(v) If you use other capture systems, monitor the parameters identified in your monitoring plan.

(2) Maintain the operating parameters within the operating range established during the compliance demonstration.

(f) *How to take credit for HAP emissions reductions when streams are combined.* When performing material balances to demonstrate compliance, if the storage of materials, exhaust, or the wastewater from more than one affected source are combined at the point where control systems are applied, any credit for emissions reductions needs to be prorated among the affected sources based on the ratio of their contribution to the uncontrolled emissions.

§ 63.5995 What are my monitoring installation, operation, and maintenance requirements?

(a) For each operating parameter that you are required by § 63.5994(e)(1) to monitor, you must install, operate, and maintain a continuous parameter monitoring system (CPMS) according to the requirements in § 63.5990(e) and (f) and in paragraphs (a)(1) through (6) of this section.

(1) You must operate your CPMS at all times that the process is operating.

(2) You must collect data from at least four equally spaced periods each hour.

(3) For at least 75 percent of the hours in an operating day, you must have valid data (as defined in your site-specific monitoring plan) for at least four equally spaced periods each hour.

(4) For each hour that you have valid data from at least four equally spaced periods, you must calculate the hourly average value using all valid data.

(5) You must calculate the daily average using all of the hourly averages calculated according to paragraph (a)(3) of this section for the 24-hour period.

(6) You must record the results for each inspection, calibration, and validation check as specified in your site-specific monitoring plan.

(b) For each temperature monitoring device, you must meet the requirements in paragraphs (a) and (b)(1) through (8) of this section.

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) For a non-cryogenic temperature range, use a temperature sensor with a minimum measurement sensitivity of 2.2 degrees centigrade or 0.75 percent of the temperature value, whichever is larger.

(3) For a cryogenic temperature range, use a temperature sensor with a minimum measurement sensitivity of 2.2 degrees centigrade or 2 percent of the temperature value, whichever is larger.

(4) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(5) If a chart recorder is used, it must have a sensitivity in the minor division of at least 20 degrees Fahrenheit.

(6) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed near the process temperature sensor must yield a reading within 16.7 degrees centigrade of the process temperature sensor's reading.

(7) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(8) At least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(c) For each integrating regeneration stream flow monitoring device associated with a carbon adsorber, you must meet the requirements in paragraphs (a) and (c)(1) and (2) of this section.

(1) Use a device that has an accuracy of ±10 percent or better.

(2) Use a device that is capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle.

(d) For any other control device, or for other capture systems, ensure that the CPMS is operated according to a monitoring plan submitted to the Administrator with the compliance status report required by § 63.9(h). The monitoring plan must meet the requirements in paragraphs (a) and (d)(1) through (3) of this section. Conduct monitoring in accordance with the plan submitted to the Administrator unless comments received from the Administrator require an alternate monitoring scheme.

(1) Identify the operating parameter to be monitored to ensure that the control or capture efficiency measured during the initial compliance test is maintained.

(2) Discuss why this parameter is appropriate for demonstrating ongoing compliance.

(3) Identify the specific monitoring procedures.

(e) For each pressure differential monitoring device, you must meet the requirements in paragraphs (a) and (e)(1) and (2) of this section.

(1) Conduct a quarterly EPA Method 2 procedure (found in 40 CFR part 60, appendix A) on the applicable NDOs and use the results to calibrate the pressure monitor if the difference in results are greater than 10 percent.

(2) Inspect the NDO monthly to ensure that their size has not changed, that there are no new NDO, and that no HAP sources have been moved closer to the NDO than when the last performance test was conducted.

§ 63.5996 How do I demonstrate initial compliance with the emission limits for tire production affected sources?

(a) You must demonstrate initial compliance with each emission limit that applies to you according to Table 6 to this subpart.

(b) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.6009(e).

Testing and Initial Compliance Requirements for Tire Cord Production Affected Sources

§ 63.5997 How do I conduct tests and procedures for tire cord production affected sources?

(a) *Methods to determine the mass percent of each HAP in coatings.* (1) To determine the HAP content in the

coating used at your tire cord production affected source, use EPA Method 311 of appendix A of this part, an approved alternative method, or any other reasonable means for determining the HAP content of your coatings. Other reasonable means include, but are not limited to: an MSDS, provided it contains appropriate information; a CPDS; or a manufacturer's HAP data sheet. You are not required to test the materials that you use, but the Administrator may require a test using EPA Method 311 (or an approved alternative method) to confirm the reported HAP content. If the results of an analysis by EPA Method 311 are different from the HAP content determined by another means, the EPA Method 311 results will govern compliance determinations.

(2) Unless you demonstrate otherwise, the HAP content analysis must be based on coatings prior to any cross-linking reactions, *i.e.*, curing. However, you may account for differences in HAP emissions resulting from chemical reactions based on the conversion rates of the individual coating formulations, chemistry demonstrations, or other demonstrations that are verifiable to the approving agency. Use the revised value in your compliance demonstration in the relevant equations in paragraph (b) of this section.

(b) *Methods to determine compliance with the emission limits in Table 2 to this subpart, option 1.* Use the equations in this paragraph (b) to demonstrate initial and continuous compliance with the emission limits for tire cord production sources using the compliance alternatives described in § 63.5987(a) and (b).

(1) *Determine mass percent of HAP.* Determine the mass percent of all HAP in each coating according to the procedures in paragraph (a) of this section.

(2) *Compliance without use of an add-on control device.* If you do not use an add-on control device to meet the emission limits, use Equation 1 of this section to calculate the monthly HAP emission rate in grams of HAP emitted per megagram of fabric processed at the tire cord production source to show that the monthly average HAP emissions do not exceed the emission limits in Table 2 to this subpart, option 1. Equation 1 follows:

$$E_{month} = \frac{\sum_{i=1}^{n} (HAP_i)(TCOAT_i)}{TFAB} \quad \text{(Eq. 1)}$$

Where:

E_{month}=mass of all HAP emitted per total mass of fabric processed in the month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of all HAP in the coating i, prior to curing and including any application station dilution, determined in accordance with paragraph (a) of this section.

$TCOAT_i$=total mass of coating i made and used for application to fabric at the facility in the month, grams.

n=number of coatings used in the month.

TFAB=total mass of fabric processed in the month, megagrams.

(3) *Compliance with use of an add-on control device.* If you use a control device to meet the emission limits, use Equation 2 of this section to calculate the monthly HAP emission rate in grams of HAP emitted per megagram of fabric processed to show that the monthly average HAP emissions do not exceed the HAP emission limit in Table 2 of this subpart, option 1. Equation 2 follows:

$$E_{month} = \frac{\sum_{i=1}^{n} (HAP_i)(TCOAT_i) + \sum_{j=1}^{m} (HAP_j)(TCOAT_j)\left(1 - \frac{EFF}{100}\right) + \sum_{k=1}^{p} (HAP_k)(TCOAT_k)}{TFAB} \quad \text{(Eq. 2)}$$

Where:

E_{month}=mass of all HAP emitted per total mass of fabric processed in the month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of all HAP in coating i, prior to curing and including any application stations dilution, determined in accordance with paragraph (a) of this section, for coatings used in the month in processes that are not routed to a control device.

$TCOAT_i$=total mass of coating i made and used for application to fabric at the facility in the month in processes that are not routed to a control device, grams.

n=number of coatings used in the month in processes that are not routed to a control device.

HAP_j=mass percent, expressed as a decimal, of all HAP in coating j, prior to curing and including any application station dilution, determined in accordance with paragraph (a) of this section, for coatings used in the month in processes that are routed to a control device during operating days, which are defined as days when the control system is operating within the operating range established during the performance test and when monitoring data are collected.

$TCOAT_j$=total mass of coating j made and used for application to fabric at the facility in the month in processes that are routed to a control device during all operating days, grams.

EFF=efficiency of the control system determined during the performance test (capture system efficiency multiplied by the control device efficiency), percent.

m=number of coatings used in the month that are routed to a control device during all operating days.

HAP_k=mass percent, expressed as a decimal, of all HAP in coating k, prior to curing and including any application station dilution, for coatings used in the month in processes that are routed to a control device during non-control operating days, which are defined as days when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected.

$TCOAT_k$=total mass of coating k made and used for application to fabric at the facility in the month in processes that are routed to a control device during all non-control operating days, grams.

p=number of coatings used in the month that are routed to a control device during all non-control operating days.

TFAB=total mass of fabric processed in the month, megagrams.

(4) Each monthly calculation is a compliance demonstration for the purpose of this subpart.

(c) *Methods to determine compliance with the emission limits in Table 2 of this subpart, option 2.* Use the equations in this paragraph (c) to demonstrate initial and continuous compliance with the emission limits for tire cord production sources using the compliance alternatives described in § 63.5987(a) and (b).

(1) Determine the mass percent of each HAP in each coating according to the procedures in paragraph (a) of this section.

(2) Use Equation 3 of this section to calculate the monthly average HAP emission rate when complying by using coatings without using an add-on control device to show that the monthly average HAP emissions do not exceed the emission limits in Table 2 to this subpart, option 2. Equation 3 follows:

$$E_{month} = \frac{\left(\sum_{i=1}^{n}(HAP_i)(TCOAT_i)\right)(10^6)}{\sum_{i=1}^{n} TCOAT_i} \qquad \text{(Eq. 3)}$$

Where:

E_{month}=mass of the specific HAP emitted per total mass of coatings from all coatings made and used in tire cord fabric production per month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of the specific HAP in the coating i, prior to curing and including any application station dilution, determined in accordance with paragraph (a) of this section.

$TCOAT_i$=total mass of coating i made and used for application to fabric at the facility in the month, grams.

n=number of coatings used in the month.

(3) Use Equation 4 of this section to calculate the monthly average HAP emission rate when complying by using an add-on control device to show that the monthly average HAP emissions do not exceed the emission limits in Table 2 to this subpart, option 2. Equation 4 follows:

$$E_{month} = \frac{\left\{\sum_{i=1}^{n}(HAP_i)(TCOAT_i) + \sum_{j=1}^{m}(HAP_j)(TCOAT_j)\left(1 - \frac{EFF}{100}\right) + \sum_{k=1}^{p}(HAP_k)(TMASS_k)\right\}(10^6)}{\sum_{i=1}^{n} TCOAT_i + \sum_{j=1}^{m} TCOAT_j + \sum_{k=1}^{p} TCOAT_k} \qquad \text{(Eq. 4)}$$

Where:

E_{month}=mass of the specific HAP emitted per total mass of coatings from all coatings made and used in tire cord fabric production per month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of the specific HAP in coating i, prior to curing and including any application station dilution, determined in accordance with paragraph (a) of this section, for coatings used in the month in processes that are not routed to a control device.

$TCOAT_i$=total mass of coating i made and used for application to fabric at the facility in the month in processes that are not routed to a control device, grams.

n=number of coatings used in the month in processes that are not routed to a control device.

HAP_j=mass percent, expressed as a decimal, of the specific HAP in coating j, prior to curing and including any application station dilution, determined in accordance with paragraph (a) of this section, for coatings used in the month in processes that are routed to a control device during operating days, which are defined as days when the control system is operating within the operating range established during the performance test and when monitoring data are collected.

$TCOAT_j$=total mass of coating i made and used for application to fabric at the facility in the month in processes that are routed to a control device during all operating days, grams.

EFF=efficiency of the control system determined during the performance test (capture system efficiency multiplied by the control device efficiency), percent.

m=number of coatings used in the month that are routed to a control device during all operating days.

HAP_k=mass percent, expressed as a decimal, of the specific HAP in coating k, prior to curing and including any application station dilution, for coatings used in the month in processes that are routed to a control device during non-control operating days, which are defined as days when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected.

$TCOAT_k$=total mass of coating i made and used for application to fabric at the facility in the month in processes that are routed to a control device during all non-control operating days, grams.

p = number of coatings used in the month that are routed to a control device during all non-control operating days.

(4) Each monthly calculation is a compliance demonstration for the purpose of this subpart.

(d) *Specific compliance demonstration requirements for tire cord production affected sources.* (1) Conduct any required compliance demonstrations according to the requirements in § 63.5993.

(2) Conduct the compliance demonstration using coatings with average mass percent HAP content that are representative of the coatings typically used at your tire cord production affected source.

(3) Establish an operating range that corresponds to the control efficiency as described in Table 5 to this subpart.

(e) *How to take credit for HAP emissions reductions from add-on control devices.* If you want to take credit in Equations 2 and 4 of this section for HAP emissions reduced using a control system, you must meet the requirements in paragraphs (e)(1) and (2) of this section.

(1) Monitor the established operating parameters as appropriate.

(i) If you use a thermal oxidizer, continuously monitor the firebox secondary chamber temperature.

(ii) If you use a carbon adsorber, monitor the total regeneration stream mass or volumetric flow for each regeneration cycle and the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle.

(iii) If you use a control device other than a thermal oxidizer or a regenerative carbon adsorber, install and operate a continuous parameter monitoring system according to your site-specific performance test plan submitted according to § 63.7(c)(2)(i).

(iv) If you use a permanent total enclosure, monitor the face velocity across the NDO in the enclosure. Also, if you use an enclosure, monitor to ensure that the sizes of the NDO have not changed, that there are no new NDO, and that a HAP emission source has not been moved closer to an NDO since the last performance test was conducted.

(v) If you use other capture systems, monitor the parameters identified in your monitoring plan.

(2) Maintain the operating parameter within the operating range established during the compliance demonstration.

(f) *How to take credit for HAP emissions reductions when streams are combined.* When performing material balances to demonstrate compliance, if the storage of materials, exhaust, or the wastewater from more than one affected source are combined at the point where control systems are applied, any credit for emissions reductions needs to be prorated among the affected sources based on the ratio of their contribution to the uncontrolled emissions.

§ 63.5998 What are my monitoring installation, operation, and maintenance requirements?

For each operating parameter that you are required by § 63.5997(e)(1) to monitor, you must install, operate, and maintain a continuous parameter monitoring system according to the provisions in § 63.5995(a) through (e).

§ 63.5999 How do I demonstrate initial compliance with the emission limits for tire cord production affected sources?

(a) You must demonstrate initial compliance with each emission limit that applies to you according to Table 7 to this subpart.

(b) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.6009(e).

Testing and Initial Compliance Requirements for Puncture Sealant Application Affected Sources

§ 63.6000 How do I conduct tests and procedures for puncture sealant application affected sources?

(a) *Methods to determine compliance with the puncture sealant application emission limitations in Table 3 to this subpart.* Use the methods and equations in paragraph (b) of this section to demonstrate initial and continuous compliance with the overall control efficiency compliance alternatives described in § 63.5989(a) and (b). Use the methods and equations in paragraphs (c) through (g) of this section to demonstrate initial and continuous compliance with the HAP constituent compliance alternative described in § 63.5989(c) and (d).

(b) *Methods to determine compliance with the emission limits in Table 3 to this subpart, option 1.* Follow the test procedures described in § 63.5993 to determine the overall control efficiency of your system.

(1) You must also meet the requirements in paragraphs (b)(1)(i) and (ii) of this section.

(i) Conduct the performance test using a puncture sealant with an average mass percent HAP content that is representative of the puncture sealants typically used at your puncture sealant application affected source.

(ii) Establish all applicable operating limit ranges that correspond to the control system efficiency as described in Table 5 to this subpart.

(2) Use Equation 1 of this section to calculate the overall efficiency of the control system. If you have a permanent total enclosure that satisfies EPA Method 204 (found in 40 CFR part 51, appendix M) criteria, assume 100 percent capture efficiency for variable F. Equation 1 follows:

$$R = \frac{(F)(E)}{100} \qquad \text{(Eq. 1)}$$

Where:

R=overall control system efficiency, percent.

F=capture efficiency of the capture system on add-on control device, percent, determined during the performance test.

E=control efficiency of add-on control device k, percent, determined during the performance test.

(3) Monitor the established operating limits as appropriate.

(i) If you use a thermal oxidizer, monitor the firebox secondary chamber temperature.

(ii) If you use a carbon adsorber, monitor the total regeneration stream mass or volumetric flow for each regeneration cycle, and the carbon bed temperature after each regeneration, and within 15 minutes of completing any cooling cycle.

(iii) For each control device used other than a thermal oxidizer or a regenerative carbon adsorber, install and operate a continuous parameter monitoring system according to your site-specific performance test plan submitted according to § 63.7(c)(2)(i).

(iv) If you use a permanent total enclosure, monitor the face velocity across the NDO in the enclosure. Also, if you use an enclosure, monitor to ensure that the sizes of the NDO have not changed, that there are no new NDO, and that a HAP emission source has not been moved closer to an NDO since the last performance test was conducted.

(v) If you use other capture systems, monitor the parameters identified in your monitoring plan.

(vi) Maintain the operating parameter within the operating range established during the performance test.

(c) *Methods to determine the mass percent of each HAP in puncture sealants.* To determine the HAP content in the puncture sealant used at your puncture sealant application affected source, use EPA Method 311 of appendix A of 40 CFR part 63, an approved alternative method, or any other reasonable means for determining the HAP content of your puncture sealants. Other reasonable means include, but are not limited to: an MSDS, provided it contains appropriate information; a CPDS; or a manufacturer's hazardous air pollutant data sheet. You are not required to test the materials that you use, but the Administrator may require a test using EPA Method 311 (or an approved alternative method) to confirm the reported HAP content. If the results of an analysis by EPA Method 311 are different from the HAP content determined by another means, the EPA Method 311 results will govern compliance determinations.

(d) *Methods to determine compliance with the emission limits in Table 3 to this subpart, option 2.* Use the equations in this paragraph (d) to demonstrate initial and continuous compliance with the HAP constituent emission limits for puncture sealant application affected sources using the compliance alternatives described in § 63.5989(c) and (d).

(1) Use Equation 2 of this section to calculate the monthly average HAP emission rate when complying by using puncture sealants without using an add-on control device to show that the monthly average HAP emissions do not exceed the emission limits in Table 3 to this subpart, option 2. Equation 2 follows:

$$E_{month} = \frac{\left(\sum_{i=1}^{n}(HAP_i)(TPSEAL_i)\right)(10^6)}{\sum_{i=1}^{n} TPSEAL_i} \qquad \text{(Eq. 2)}$$

Where:

E_{month}=mass of the specific HAP emitted per total mass of puncture sealants from all puncture sealants used at the puncture

sealant affected source per month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of the specific HAP in puncture sealant i, including any application booth dilution, determined in accordance with paragraph (c) of this section.

$TPSEAL_i$=total mass of puncture sealant i used in the month, grams.

n=number of puncture sealants used in the month.

(2) Use Equation 3 of this section to calculate the monthly average HAP emission rate when complying by using puncture sealants by using an add-on control device to show that the monthly average HAP emissions do not exceed the emission limits in Table 3 to this subpart, option 2. Equation 3 follows:

$$E_{month} = \frac{\left\{\sum_{i=1}^{n}(HAP_i)(TPSEAL_i) + \sum_{j=1}^{m}(HAP_j)(TPSEAL_j)\left(1-\frac{EFF}{100}\right) + \sum_{k=1}^{p}(HAP_k)(TPSEAL_k)\right\}(10^6)}{\sum_{i=1}^{n}TPSEAL_i + \sum_{j=1}^{m}TPSEAL_j + \sum_{k=1}^{p}TPSEAL_k} \quad \text{(Eq. 3)}$$

Where:

E_{month}=mass of the specific HAP emitted per total mass of puncture sealants used at the puncture sealant affected source per month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of the specific HAP in puncture sealant i, including any application booth dilution, determined in accordance with paragraph (c) of this section for puncture sealants used in the month in processes that are not routed to a control device.

$TPSEAL_i$=total mass of puncture sealant i used in the month in processes that are not routed to a control device, gram.

n=number of puncture sealants used in the month in processes that are not routed to a control device.

HAP_j=mass percent, expressed as a decimal, of the specific HAP, in puncture sealant j, including any application booth dilution, determined in accordance with paragraph (c) of this section, for puncture sealants used in the month in processes that are routed to a control device during operating days, which are defined as days when the control system is operating within the operating range established during the performance test and when monitoring data are collected.

$TPSEAL_j$=total mass of puncture sealant j used in the month in processes that are routed to a control device during all operating days, grams.

EFF=efficiency of the control system determined during the performance test (capture system efficiency multiplied by the control device efficiency), percent.

m=number of puncture sealants used in the month that are routed to a control device during all operating days.

HAP_k=mass percent, expressed as a decimal, of the specific HAP, in puncture sealant k, including any application booth dilution, for puncture sealants used in the month in processes that are routed to a control device during non-control operating days, which are defined as days when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected.

$TPSEAL_k$=total mass of total mass of puncture sealant k used in the month in processes that are routed to a control device during all non-control operating days, grams.

p=number of puncture sealants used in the month that are routed to a control device during all non-control operating days.

(3) Each monthly calculation is a compliance demonstration for the purpose of this subpart.

(e) *Specific compliance demonstration requirements for puncture sealant application affected sources.* (1) Conduct any required compliance demonstrations according to the requirements in § 63.5993.

(2) Conduct the compliance demonstration using a puncture sealant with average mass percent HAP content that is representative of the puncture sealants typically used at your puncture sealant application affected source.

(3) Establish an operating range that corresponds to the appropriate control efficiency described in Table 5 to this subpart.

(f) *How to take credit for HAP emissions reductions from add-on control devices.* If you want to take credit in Equation 3 of this section for HAP emissions reduced using a control system, you must monitor the established operating parameters as appropriate and meet the requirements in paragraph (b)(3) of this section.

(g) *How to take credit for HAP emissions reductions when streams are combined.* When performing material balances to demonstrate compliance, if the storage of materials, exhaust, or the wastewater from more than one affected source are combined at the point where control systems are applied, any credit for emissions reductions needs to be prorated among the affected sources based on the ratio of their contribution to the uncontrolled emissions.

§ 63.6001 What are my monitoring installation, operation, and maintenance requirements?

For each operating limit that you are required by § 63.6000(b)(3) to monitor or each operating parameter that you are required by § 63.6000(f) to monitor, you must install, operate, and maintain a continuous parameter monitoring system according to the provisions in § 63.5995(a) through (e).

§ 63.6002 How do I demonstrate initial compliance with the emission limits for puncture sealant application affected sources?

(a) You must demonstrate initial compliance with each emission limit that applies to you according to Table 8 to this subpart.

(b) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.6009(e).

Continuous Compliance Requirements for Tire Production Affected Sources

§ 63.6003 How do I monitor and collect data to demonstrate continuous compliance with the emission limits for tire production affected sources?

(a) You must monitor and collect data as specified in Table 9 to this subpart.

(b) Except for periods of monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) while the affected source is operating. This includes periods of startup, shutdown, and malfunction when the affected source is operating.

(c) In data average calculations and calculations used to report emission or operating levels, you may not use data recorded during periods of monitoring malfunctions or associated repairs, or recorded during required quality assurance or control activities. Such data may not be used in fulfilling any applicable minimum data availability requirement. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

§ 63.6004 How do I demonstrate continuous compliance with the emission limits for tire production affected sources?

(a) You must demonstrate continuous compliance with each applicable limit in Table 1 to this subpart using the methods specified in Table 10 to this subpart.

(b) You must report each instance in which you did not meet an emission limit in Table 1 to this subpart. You must also report each instance in which you did not meet the applicable requirements in Table 10 to this subpart. These instances are deviations from the emission limits in this subpart. The deviations must be reported in accordance with the requirements in § 63.6010(e).

(c) You also must meet the following requirements if you are complying with the purchase alternative for tire production sources described in § 63.5985(a):

(1) If, after you submit the Notification of Compliance Status, you use a cement or solvent for which you have not previously verified percent HAP mass using the methods in § 63.5994(a), you must verify that each cement and solvent used in the affected source meets the emission limit, using any of the methods in § 63.5994(a).

(2) You must update the list of all the cements and solvents used at the affected source.

(3) With the compliance report for the reporting period during which you used the new cement or solvent, you must submit the updated list of all cements and solvents and a statement certifying that, as purchased, each cement and solvent used at the affected source during the reporting period met the emission limits in Table 1 to this subpart.

Continuous Compliance Requirements for Tire Cord Production Affected Sources

§ 63.6005 How do I monitor and collect data to demonstrate continuous compliance with the emission limits for tire cord production affected sources?

(a) You must monitor and collect data to demonstrate continuous compliance with the emission limits for tire cord production affected sources as specified in Table 11 to this subpart.

(b) You must monitor and collect data according to the requirements in § 63.6003(b) and (c).

§ 63.6006 How do I demonstrate continuous compliance with the emission limits for tire cord production affected sources?

(a) You must demonstrate continuous compliance with each applicable emission limit in Table 2 to this subpart using the methods specified in Table 12 to this subpart.

(b) You must report each instance in which you did not meet an applicable emission limit in Table 2 to this subpart. You must also report each instance in which you did not meet the applicable requirements in Table 12 to this subpart. These instances are deviations from the emission limits in this subpart. The deviations must be reported in accordance with the requirements in § 63.6010(e).

Continuous Compliance Requirements for Puncture Sealant Application Affected Sources

§ 63.6007 How do I monitor and collect data to demonstrate continuous compliance with the emission limitations for puncture sealant application affected sources?

(a) You must monitor and collect data to demonstrate continuous compliance with the emission limitations for puncture sealant application affected sources as specified in Table 13 to this subpart.

(b) You must monitor and collect data according to the requirements in § 63.6003(b) and (c).

§ 63.6008 How do I demonstrate continuous compliance with the emission limitations for puncture sealant application affected sources?

(a) You must demonstrate continuous compliance with each applicable emission limitation in Tables 3 and 4 to this subpart using the methods specified in Table 14 to this subpart.

(b) You must report each instance in which you did not meet an applicable emission limit in Table 3 to this subpart. You must also report each instance in which you did not meet the applicable requirements in Table 14 to this subpart. These instances are deviations from the emission limits in this subpart. The deviations must be reported in accordance with the requirements in § 63.6010(e).

Notifications, Reports, and Records

§ 63.6009 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7 (b) and (c), 63.8(f) (4) and (6), and 63.9 (b) through (e) and (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you startup your affected source before July 9, 2002, you must submit an Initial Notification not later than November 6, 2002.

(c) As specified in § 63.9(b)(3), if you startup your new or reconstructed affected source on or after July 9, 2002, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test, design evaluation, or other initial compliance demonstration as specified in Tables 5 through 8 to this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). The Notification must contain the information listed in Table 15 to this subpart for compliance reports. The Notification of Compliance Status must be submitted according to the following schedules, as appropriate:

(1) For each initial compliance demonstration required in Tables 6 through 8 to this subpart that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(2) For each initial compliance demonstration required in Tables 6 through 8 to this subpart that includes a performance test conducted according to the requirements in Table 5 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

(f) For each tire production affected source, the Notification of Compliance Status must also identify the emission limit option in § 63.5984 and the compliance alternative in § 63.5985 that you have chosen to meet.

(g) For each tire production affected source complying with the purchase compliance alternative in § 63.5985(a), the Notification of Compliance Status must also include the information listed in paragraphs (g)(1) and (2) of this section.

(1) A list of each cement and solvent, as purchased, that is used at the affected source and the manufacturer or supplier of each.

(2) The individual HAP content (percent by mass) of each cement and solvent that is used.

(h) For each tire production or tire cord production affected source using a control device, the Notification of Compliance Status must also include the information in paragraphs (h) (1) and (2) of this section for each operating

parameter in §§ 63.5994(e)(1) and 63.5997(e)(1) that applies to you.

(1) The operating parameter value averaged over the full period of the performance test (e.g., average secondary chamber firebox temperature over the period of the performance test was 1,500 degrees Fahrenheit).

(2) The operating parameter range within which HAP emissions are reduced to the level corresponding to meeting the applicable emission limits in Tables 1 and 2 to this subpart.

(i) For each puncture sealant application affected source using a control device, the Notification of Compliance Status must include the information in paragraphs (i)(1) and (2) of this section for each operating limit in § 63.6000(b)(3) and each operating parameter in § 63.6000(f).

(1) The operating limit or operating parameter value averaged over the full period of the performance test.

(2) The operating limit or operating parameter range within which HAP emissions are reduced to the levels corresponding to meeting the applicable emission limitations in Table 3 to this subpart.

(j) For each tire cord production affected source required to assess the predominant use for coating web substrates as required by § 63.5981(b), you must submit a notice of the results of the reassessment within 30 days of completing the reassessment. The notice shall specify whether this subpart XXXX is still the applicable subpart and, if it is not, which part 63 subpart is applicable.

§ 63.6010 What reports must I submit and when?

(a) You must submit each applicable report in Table 15 to this subpart.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 15 to this subpart and according to the requirements in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.5983 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.5983.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.5983.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting subparts pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain information specified in paragraphs (c)(1) through (10) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there are no deviations from any emission limitations (emission limit or operating limit) that applies to you, a statement that there were no deviations from the emission limitations during the reporting period.

(6) If there were no periods during which the operating parameter monitoring systems were out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the operating parameter monitoring systems or CPMS were out-of-control during the reporting period.

(7) For each tire production affected source, the emission limit option in § 63.5984 and the compliance alternative in § 63.5985 that you have chosen to meet.

(8) For each tire production affected source complying with the purchase compliance alternative in § 63.5985(a), and for each annual reporting period during which you use a cement and solvent that, as purchased, was not included in the list submitted with the Notification of Compliance Status in § 63.6009(g), an updated list of all cements and solvents used, as purchased, at the affected source. You must also include a statement certifying that each cement and solvent, as purchased, that was used at the affected source during the reporting period met the HAP constituent limits (option 1) in Table 1 to this subpart.

(9) For each tire cord production affected source, the emission limit option in § 63.5986 and the compliance alternative in § 63.5987 that you have chosen to meet.

(10) For each puncture sealant application affected source, the emission limit option in § 63.5988 and the compliance alternative in § 63.5989 that you have chosen to meet.

(d) For each deviation from an emission limitation (emission limit or operating limit) that occurs at an affected source where you are not using a CPMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (4) and paragraphs (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction when the affected source is operating.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) and the corrective action taken.

(e) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a compliance report (pursuant to Table 10 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A) which includes all required information concerning deviations from any emission limitation (including any operating limit) or work practice requirement in this subpart, submission of the compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

(f) Upon notification to the Administrator that a tire production affected source has eliminated or reformulated cement and solvent so that the source can demonstrate compliance using the purchase alternative in § 63.5985(a), future compliance reports for this affected source may be submitted annually.

(g) If acceptable to both the Administrator and you, you may submit reports and notifications electronically.

§ 63.6011 What records must I keep?

(a) You must keep the records specified in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) Records of performance tests as required in § 63.10(b)(2)(viii).

(3) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(b) For each tire production affected source, you must keep the records specified in Table 9 to this subpart to show continuous compliance with each emission limit that applies to you.

(c) For each tire cord production affected source, you must keep the records specified in Table 11 to this subpart to show continuous compliance with each emission limit that applies to you.

(d) For each puncture sealant application affected source, you must keep the records specified in Table 13 to this subpart to show continuous compliance with each emission limit that applies to you.

§ 63.6012 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.6013 What parts of the General Provisions apply to me?

Table 17 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.6014 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.5981 through 63.5984, 63.5986, and 63.5988.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.6015 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act and in § 63.2, the General Provisions. The following are additional definitions of terms used in this subpart:

As purchased means the condition of a cement and solvent as delivered to the facility, prior to any mixing, blending, or dilution.

Capture system means a hood, enclosed room, or other means of collecting organic HAP emissions into a closed-vent system that conveys these emissions to a control device.

Cements and solvents means the collection of all organic chemicals, mixtures of chemicals, and compounds used in the production of rubber tires, including cements, solvents, and mixtures used as process aids. Cements and solvents include, but are not limited to, tread end cements, undertread cements, bead cements, tire building cements and solvents, green tire spray, blemish repair paints, side wall protective paints, marking inks, materials used to process equipment, and slab dip mixtures. Cements and solvents do not include coatings or process aids used in tire cord production, puncture sealant application, rubber processing, or materials used to construct, repair, or maintain process equipment, or chemicals and compounds that are not used in the tire production process such as materials used in routine janitorial or facility grounds maintenance, office supplies (*e.g.,* dry-erase markers, correction fluid), architectural paint, or any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution to and use by the general public.

Coating means a compound or mixture of compounds that is applied to a fabric substrate in the tire cord production operation that allows the fabric to be prepared (*e.g.,* by heating, setting, curing) for incorporation into a rubber tire.

Components of rubber tires means any piece or part used in the manufacture of rubber tires that becomes an integral portion of the rubber tire when manufacture is complete and includes mixed rubber compounds, sidewalls, tread, tire beads, and liners. Other components often associated with rubber tires such as wheels, valve stems, tire bladders and inner tubes are not considered components of rubber tires for the purposes of these standards. Tire cord and puncture sealant, although components of rubber tires, are considered as separate affected sources in these standards and are defined separately.

Control device means a combustion device, recovery device, recapture device, or any combination of these devices used for recovering or oxidizing organic hazardous air pollutant vapors. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators (oxidizers), flares, boilers, and process heaters.

Control system efficiency means the percent of total volatile organic compound emissions, as measured by EPA Method 25 or 25A (40 CFR part 60, appendix A), recovered or destroyed by a control device multiplied by the percent of total volatile organic compound emissions, as measured by

Method 25 or 25A, that are captured and conveyed to the control device.

Deviation means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit, opacity limit, operating limit, or visible emission limit.

Fabric processed means the amount of fabric coated and finished for use in subsequent product manufacturing.

Mixed rubber compound means the material, commonly referred to as rubber, from which rubber tires and components of rubber tires are manufactured. For the purposes of this definition, mixed rubber compound refers to the compound that leaves the rubber mixing process (*e.g.,* banburys) and is then processed into components from which rubber tires are manufactured.

Monthly operating period means the period in the Notification of Compliance Status report comprised of the number of operating days in the month.

Operating day means the period defined in the Notification of Compliance Status report. It may be from midnight to midnight or a portion of a 24-hour period.

Process aid means a solvent, mixture, or cement used to facilitate or assist in tire component identification; component storage; tire building; tire curing; and tire repair, finishing, and identification.

Puncture sealant means a mixture that may include, but is not limited to, solvent constituents, mixed rubber compound, and process oil that is applied to the inner liner of a finished tire for the purpose of sealing any future hole which might occur in the tread when an object penetrates the tire.

Responsible official means responsible official as defined in 40 CFR 70.2.

Rubber means the sum of the materials (for example, natural rubber, synthetic rubber, carbon black, oils, sulfur) that are combined in specific formulations for the sole purpose of making rubber tires or components of rubber tires.

Rubber mixing means the physical process of combining materials for use in rubber tire manufacturing to make mixed rubber compound using the collection of banburys and associated drop mills.

Rubber tire means a continuous solid or pneumatic cushion typically encircling a wheel and usually consisting, when pneumatic, of an external rubber covering.

Rubber used means the total mass of mixed rubber compound delivered to the tire production operations in a tire manufacturing facility (*e.g.,* the collection of warm-up mills, extruders, calendars, tire building, or other tire component and tire manufacturing equipment).

Tire cord means any fabric (*e.g.,* polyester, cotton) that is treated with a coating mixture that allows the fabric to more readily accept impregnation with rubber to become an integral part of a rubber tire.

Tables to Subpart XXXX of Part 63

As stated in § 63.5984, you must comply with the emission limits for each new, reconstructed, or existing tire production affected source in the following table:

TABLE 1 TO SUBPART XXXX OF PART 63.—EMISSION LIMITS FOR TIRE PRODUCTION AFFECTED SOURCES

For each . . .	You must meet the following emission limits.
1. Option 1—HAP constituent option	a. Emissions of each HAP in Table 16 to this subpart must not exceed 1,000 grams HAP per megagram (2 pounds per ton) of total cements and solvents used at the tire production affected source, and b. Emissions of each HAP not in Table 16 to this subpart must not exceed 10,000 grams HAP per megagram (20 pounds per ton) of total cements and solvents used at the tire production affected source.
2. Option 2—production-based option	Emissions of HAP must not exceed 0.024 grams per megagram (0.00005 pounds per ton) of rubber used at the tire production affected source.

As stated in § 63.5986, you must comply with the emission limits for tire cord production affected sources in the following table:

TABLE 2 TO SUBPART XXXX OF PART 63.—EMISSION LIMITS FOR TIRE CORD PRODUCTION AFFECTED SOURCES

For each . . .	You must meet the following emission limits.
1. Option 1.a (production-based option)—Existing tire cord production affected source.	Emissions must not exceed 280 grams HAP per megagram (0.56 pounds per ton) of fabric processed at the tire cord production affected source.
2. Option 1.b (production-based option)—New or reconstructed tire cord production affected source.	Emissions must not exceed 220 grams HAP per megagram (0.43 pounds per ton) of fabric processed at the tire cord production affected source.
3. Option 2 (HAP constituent option)—Existing, new or reconstructed tire cord production affected source.	a. Emissions of each HAP in Table 16 to this subpart must not exceed 1,000 grams HAP per megagram (2 pounds per ton) of total coatings used at the tire cord production affected source, and b. Emissions of each HAP not in Table 16 to this subpart must not exceed 10,000 grams HAP per megagram (20 pounds per ton) of total coatings used at the tire cord production affected source.

As stated in § 63.5988(a), you must comply with the emission limits for puncture sealant application affected sources in the following table:

TABLE 3 TO SUBPART XXXX OF PART 63.—EMISSION LIMITS FOR PUNCTURE SEALANT APPLICATION AFFECTED SOURCES

For each . . .	You must meet the following emission limit.
1. Option 1.a (percent reduction option)—Existing puncture sealant application spray booth.	Reduce spray booth HAP (measured as volatile organic compounds (VOC)) emissions by at least 86 percent by weight.
2. Option 1.b (percent reduction option)—New or reconstructed puncture sealant application spray booth.	Reduce spray booth HAP (measured as VOC) emissions by at least 95 percent by weight.
3. Option 2 (HAP constituent option) Existing, new or reconstructed puncture sealant application spray booth.	a. Emissions of each HAP in Table 16 to this subpart must not exceed 1,000 grams HAP per megagram (2 pounds per ton) of total puncture sealants used at the puncture sealant affected source, and b. Emissions of each HAP not in Table 16 to this subpart must not exceed 10,000 grams HAP per megagram (20 pounds per ton) of total puncture sealants used at the puncture sealant affected source.

As stated in § 63.5988(b), you must comply with the operating limits for puncture sealant application affected sources in the following table unless you are meeting Option 2 (HAP constituent option) limits in Table 3 to this subpart:

TABLE 4 TO SUBPART XXXX OF PART 63.—OPERATING LIMITS FOR PUNCTURE SEALANT APPLICATION CONTROL DEVICES

For each . . .	You must . . .
1. Thermal oxidizer to which puncture sealant application spray booth emissions are ducted.	Maintain the daily average firebox secondary chamber temperature within the operating range established during the performance test.
2. Carbon adsorber (regenerative) to which puncture sealant application spray booth emissions are ducted.	a. Maintain the total regeneration mass, volumetric flow, and carbon bed temperature at the operating range established during the performance test. b. Reestablish the carbon bed temperature to the levels established during the performance test within 15 minutes of each cooling cycle.
3. Other type of control device to which puncture sealant application spray booth emissions are ducted.	Maintain your operating parameter(s) within the range(s) established during the performance test and according to your monitoring plan.
4. Permanent total enclosure capture system	a. Maintain the face velocity across any NDO at least at the levels established during the performance test. b. Maintain the size of NDO, the number of NDO, and their proximity to HAP emission sources consistent with the parameters established during the performance test.
5. Other capture system	Maintain the operating parameters within the range(s) established during the performance test and according to your monitoring plan.

As stated in § 63.5993, you must comply with the requirements for performance tests in the following table:

TABLE 5 TO SUBPART XXXX OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

If you are using . . .	You must . . .	Using . . .	According to the following requirements . . .
1. A thermal oxidizer.	a. Measure total HAP emissions, determine destruction efficiency of the control device, and establish a site-specific firebox secondary chamber temperature limit at which the emission limit that applies to the affected source is achieved.	i. Method 25 or 25A performance test and data from the temperature monitoring system.	(1). Measure total HAP emissions and determine the destruction efficiency of the control device using Method 25 (40 CFR part 60, appendix A). You may use Method 25A (40 CFR part 60, appendix A) if: an exhaust gas volatile organic matter concentration of 50 parts per million (ppmv) or less is required to comply with the standard; the volatile organic matter concentration at the inlet to the control system and the required level of control are such that exhaust volatile organic matter concentrations are 50 ppmv or less; or because of the high efficiency of the control device exhaust, is 50 ppmv or less, regardless of the inlet concentration. (2). Collect firebox secondary chamber temperature data every 15 minutes during the entire period of the initial 3-hour performance test, and determine the average firebox temperature over the 3-hour performance test by computing the average of all of the 15-minute reading.

TABLE 5 TO SUBPART XXXX OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

If you are using . . .	You must . . .	Using . . .	According to the following requirements . . .
2. A carbon adsorber (regenerative).	a. Measure total organic HAP emissions, establish the total regeneration mass or volumetric flow, and establish the temperature of the carbon bed within 15 minutes of completing any cooling cycles. The total regeneration mass, volumetric flow, and carbon bed temperature must be those at which the emission limit that applies to the affected source is achieved.	i. Method 25 or Method 25A performance test and data from the carbon bed temperature monitoring device.	(1). Measure total HAP emissions using Method 25. You may use Method 25A, if an exhaust gas volatile organic matter concentration of 50 ppmv or less; or because of the high efficiency of the control device, exhaust is 50 ppmv or less is required to comply with the standard; the volatile organic matter concentration (VOMC) at the inlet to the control system and the required level of control are such that exhaust VOMCs are 50 ppmv or less; or because of the high efficiency of the control device, exhaust is 50 ppmv or less, regardless of the inlet concentration. (2). Collect carbon bed total regeneration mass or volumetric flow for each carbon bed regeneration cycle during the performance test. (3). Record the maximum carbon bed temperature data for each carbon bed regeneration cycle during the performance test. (4). Record the carbon bed temperature within 15 minutes of each cooling cycle during the performance test. (5). Determine the average total regeneration mass or the volumetric flow over the 3-hour performance test by computing the average of all of the readings. (6). Determine the average maximum carbon bed temperature over the 3-hour performance test by computing the average of all of the readings. (7). Determine the average carbon bed temperature within 15 minutes of the cooling cycle over the 3-hour performance test.
3. Any control device other than a thermal oxidizer or carbon adsorber.	Determine control device efficiency and establish operating parameter limits with which you will demonstrate continuous compliance with the emission limit that applies to the affected source.	EPA-approved methods and data from the continuous parameter monitoring system.	Conduct the performance test according to the site-specific plan submitted according to § 63.7(c)(2)(i).
4. All control devices.	a. Select sampling ports' location and the number of traverse ports.	Method 1 or 1A of 40 CFR part 60, appendix A.	Locate sampling sites at the inlet and outlet of the control device and prior to any releases to the atmosphere.
	b. Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A.	
	c. Conduct gas analysis	Method 3, 3A, or 3B of 40 CFR part 60 appendix A.	
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A.	
5. A permenent total enclosure (PTE).	Measure the face velocity across natural draft openings and document the design features of the enclosure.	Method 204 of CFR part 51, appendix M.	Capture efficiency is assumed to be 100 percent if the criteria are met
6. Temporary total enclosure (TTE).	Construct a temporarily installed enclosure that allows you to determine the efficiency of your capture system and establish operating parameter limits.	Method 204 and the appropriate combination of Methods 204A–204F of 40 CFR part 51, appendix M.	

As stated in § 63.5996, you must show initial compliance with the emission limits for tire production affected sources according to the following table:

TABLE 6 TO SUBPART XXXX OF PART 62.—INITIAL COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE PRODUCTION AFFECTED SOURCES

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Sources complying with the purchase compliance alternative in § 63.5985(a).	The HAP constituent option in Table 1 to this subpart, option 1.	You demonstrate for each monthly period that no cements and solvents were purchased and used at the affected source containing HAP in amounts above the composition limits in Table 1 to this subpart, option 1, determined according to the procedures in § 63.5994(a) and (b)(1).
2. Sources complying with the monthly average compliance alternative without using a control device in § 63.5985(b).	The HAP constituent option in Table 1 to this subpart, option 1.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 to this subpart, option 1, determined according to the applicable procedures in § 63.5994(a) and (b)(2).
3. Sources complying with the monthly average compliance alternative using a control device in § 63.5985(c).	The HAP constituent option in Table 1 to this subpart, option 1.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 to this subpart, option 1, determined according to the applicable procedures in § 63.5994(a), (b)(3) and (4), and (d) through (f).
4. Sources complying with the monthly average compliance alternative without use of a control device in § 63.5985(b).	The production-based option in Table 1 to this subpart, option 2.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 to this subpart, option 2, determined according to the applicable procedures in § 63.5994(c)(1) through (3).
5. Sources complying with the monthly average compliance alternative using a control device in § 63.5985(c).	The production-based option in Table 1 to this subpart, option 2.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 to this subpart, option 2, determined according to the applicable procedures in § 63.5994(c)(1) and (2), (4) and (5), and (d) through (f).

As stated in § 63.5999, you must show initial compliance with the emission limits for tire cord production affected sources according to the following table:

TABLE 7 TO SUBPART XXXX OF PART 63.—INITIAL COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE CORD PRODUCTION AFFECTED SOURCES

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Sources complying with the monthly average alternative without using an add-on control device according to § 63.5987(a).	The production-based option in Table 2 to this subpart, option 1.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 2 to this subpart, option 1, determined according to the procedures in § 63.5997(a), (b)(1) and (2).
2. Sources complying with the monthly average alternative using an add-on control device according to § 63.5987(b).	The production-based option in Table 2 to this subpart, option 1.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 2 to this subpart, option 1, determined according to the procedures in § 63.5997(a), (b)(1) and (3) through (4), and (d) through (f).
3. Sources complying with the monthly average alternative without using an add-on control device according to § 63.5987(a).	The HAP constituent option in Table 2 to this subpart, option 2.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the HAP constituent emission limits in Table 2 to this subpart, option 2, determined according to the applicable procedures in § 63.5997(a) and (c)(1) and (2).
4. Sources complying with the monthly average alternative using an add-on control device according to § 63.5987(b).	The HAP constituent option in Table 2 to this subpart, option 2.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the HAP constituent emission limits in Table 2 to this subpart, option 2, determined according to the applicable procedures in § 63.5997(c)(1) and (3) through (4), and (d) through (f).

As stated in § 63.6002, you must show initial compliance with the emission limits for puncture sealant application affected sources according to the following table:

TABLE 8 TO SUBPART XXXX OF PART 63.—INITIAL COMPLIANCE WITH THE EMISSION

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Sources complying with the overall control efficiency alternative in § 63.5989(a).	The percent reduction option in Table 3 to this subpart, option 1.	You demonstrate that you conducted the performance tests, determined the overall efficiency of your control system, demonstrated that the applicable limits in Table 3 to this subpart, option 1, have been achieved, and established the operating limits in Table 4 of this subpart for your equipment according to the applicable procedures in § 63.6000(b).
2. Sources complying with the permanent total enclosure and control device efficiency alternative in § 63.5989(b).	The percent reduction option in Table 3 to this subpart, option 1.	You demonstrate that you conducted the performance tests, determined the individual efficiencies of your capture and control systems, demonstrated that the applicable limits in Table 3 to this subpart, option 1, have been achieved, and established the operating limits in Table 4 of this subpart for your equipment according to the applicable procedures in § 63.6000(b).
3. Sources complying with the monthly average alternative in § 63.5989(c) without using an add-on control device.	The HAP constituent option in Table 3 to this subpart, option 2.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the HAP constituent emission limits in Table 3 to this subpart, option 2, determined according to the applicable procedures in § 63.6000(c) and (d)(1).
4. Sources complying with the HAP constituent alternative in § 63.5989(d) by using an add-on control device.	The HAP constituent option in Table 3 to this subpart, option 2.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the HAP constituent emission limits in Table 3 to this subpart, option 2, determined according to the applicable procedures in § 63.6000(c), (d)(2) and (3), and (e) through (f).

As stated in § 63.6003, you must maintain minimum data to show continuous compliance with the emission limits for tire production affected sources according to the following table:

TABLE 9 TO SUBPART XXXX OF PART 63.—MINIMUM DATA FOR CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE PRODUCTION AFFECTED SOURCES

For . . .	You must maintain . . .
1. Sources complying with purchase compliance alternative in § 63.5985(a) that are meeting the HAP constituent emission limit (option 1) in Table 1 to this subpart.	a. A list of each cement and solvent as purchased and the manufacturer or supplier of each. b. A record of Method 311 (40 CFR part 60, appendix A), or approved alternative method, test results indicating the mass percent of each HAP for each cement and solvent as purchased.
2. Sources complying with the monthly average compliance alternative without using a control device according to § 63.5985(b) that are meeting emission limits in Table 1 to this subpart.	a. A record of Method 311, or approved alternative method, test results, indicating the mass percent of each HAP for each cement and solvent, as purchased. b. The mass of each cement and solvent used each monthly operating period. c. The total mass of rubber used each monthly operating period (if complying with the production-based emission limit, option 2, in Table 1 to this subpart). d. All data and calculations used to determine the monthly average mass percent for each HAP for each monthly operating period. e. Monthly averages of emissions in the appropriate emission limit format.
3. Sources complying with the monthly average compliance alternative using a control device according to § 63.5985(c) that are meeting emission limits in Table 1 to this subpart.	a. The same information as sources complying with the monthly average alternative without using a control device. b. Records of operating parameter values for each operating parameter that applies to you.

As stated in § 63.6004, you must show continuous compliance with the emission limits for tire production affected sources according to the following table:

TABLE 10 TO SUBPART XXXX OF PART 63.—CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE PRODUCTION AFFECTED SOURCES

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
1. Sources complying with purchase compliance alternative in § 63.5985(a).	The HAP constituent option in Table 1 to this subpart, option 1.	Demonstrating for each monthly period that no cements and solvents were purchased and used at the affected source containing HAP in amounts above the composition limits in Table 1 to this subpart, option 1, determined according to the procedures in § 63.5994(a) and (b)(1).

TABLE 10 TO SUBPART XXXX OF PART 63.—CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE PRODUCTION AFFECTED SOURCES—Continued

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
2. Sources complying with the monthly average compliance alternative without using a control device according to § 63.5985(b).	The HAP constituent option in Table 1 to this subpart, option 1.	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 to this subpart, option 1, determined according to the applicable procedures in § 63.5994(a) and (b)(2).
3. Sources complying with the monthly average compliance alternative using a control device according to § 63.5985(c).	The HAP constituent option in Table 1 to this subpart, option 1.	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 to this subpart, option 1, determined according to the applicable procedures in § 63.5994(a), (b)(3) and (4), and (d) through (f).
4. Sources complying with the monthly average compliance alternative without using a control device according to § 63.5985(b).	The production-based option in Table 1 to this subpart, option 2.	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 to this subpart, option 2, determined according to the applicable procedures in § 63.5994(c)(1) through (3).
5. Sources complying with the monthly average compliance alternative using a control device according to § 63.5985(c).	The production-based option in Table 1 to this subpart, option 2.	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 to this subpart, option 2, determined according to the applicable procedures in § 63.5994(c)(1) and (2), (4) and (5), and (d) through (f).

As stated in § 63.6005, you must maintain minimum data to show continuous compliance with the emission limits for tire cord production affected sources according to the following table:

TABLE 11 TO SUBPART XXXX OF PART 63.—MINIMUM DATA FOR CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE CORD PRODUCTION AFFECTED SOURCES

For . . .	You must maintain . . .
1. Sources complying with the monthly average alternative without using an add-on control device according to § 63.5987(a) that are meeting emission limits in Table 2 to this subpart.	a. A record of Method 311 (40 CFR part 63, appendix A), or approved alternative method, test results, indicating the mass percent of each HAP for coating used. b. The mass of each coating used each monthly operating period. c. The total mass of fabric processed each monthly operating period (if complying with the production-based option in Table 2 to this subpart, option 1). d. All data and calculations used to determine the monthly average mass percent for each HAP for each monthly operating period. e. Monthly averages of emissions in the appropriate emission emission limit format.
2. Sources complying with the monthly average alternative using an add-on control device according to § 63.5987(b) that are meeting emission limits in Table 2 to this subpart.	a. The same information as sources complying with the monthly average alternative without using a control device. b. Records of operating parameter values for each operating parameter that applies to you.

As stated in § 63.6006, you must show continuous compliance with the emission limits for tire cord production affected sources according to the following table:

TABLE 12 TO SUBPART XXXX OF PART 63.—CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE CORD PRODUCTION AFFECTED SOURCES

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
1. Sources complying with the monthly average compliance alternative without using an add-on control device according to § 63.5987(a).	In Table 2 to this subpart	a. Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 2 to this subpart, option 1, determined according to the applicable procedures in § 63.5997(a) and (b)(1) and (2). b. Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the HAP constituent emission limits in Table 2 to this subpart, option 2, determined according to the applicable procedures in § 63.5997(a) and (c)(1) and (2).

TABLE 12 TO SUBPART XXXX OF PART 63.—CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE CORD PRODUCTION AFFECTED SOURCES—Continued

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
2. Sources complying with the monthly average compliance alternative using an add-on control device according to § 63.5987(b).	In Table 2 to this subpart	a. Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 2 to this subpart, option 1, determined according to the applicable procedures in § 63.5997(a), (b)(1) and (3) through (4), and (d) through (f). b. Demonstrating that the monthly HAP emissions for each monthly operating period do not exceed the HAP constituent emission limits in Table 2 to this subpart, option 2, determined according to the applicable procedures in § 63.5997(c)(1) and (3) through (4), and (d) through (f).

As stated in § 63.6007, you must maintain minimum data to show continuous compliance with the emission limitations for puncture sealant application affected sources according to the following table:

TABLE 13 TO SUBPART XXXX OF PART 63.—MINIMUM DATA FOR CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITATIONS FOR PUNCTURE SEALANT APPLICATION AFFECTED SOURCES

For . . .	You must maintain . . .
1. Sources complying with the control efficiency alternatives in § 63.5989(a) or (b) that are meeting the percent reduction emission limits in Table 3 to this subpart, option 1, using a thermal oxidizer to reduce HAP emissions so that they do not exceed the operating limits in Table 4 to this subpart.	Records of the secondary chamber firebox temperature for 100 percent of the hours during which the process was operated.
2. Sources complying with the control efficiency alternatives in § 63.5989(a) or (b) that are meeting the percent reduction emission limits in Table 3 to this subpart, option 1, using a carbon adsorber to reduce HAP emissions so that they do not exceed the operating limits in Table 4 to this subpart.	Records of the total regeneration stream mass or volumetric flow for each regeneration cycle for 100 percent of the hours during which the process was operated, and a record of the carbon bed temperature after each regeneration, and within 15 minutes of completing any cooling cycle for 100 percent of the hours during which the process was operated.
3. Sources complying with the control efficiency alternatives in § 63.5989(a) or (b) that are meeting the percent reduction emission limits in Table 3 to this subpart, option 1, using any other type of control device to which puncture sealant application spray booth HAP emissions are ducted so that they do not exceed the operating limits in Table 4 to this subpart.	Records of operating parameter values for each operating parameter that applies to you.
4. Sources complying with the permanent total enclosure compliance alternative in § 63.5989(b) that are meeting the percent reduction emission limits in Table 3 to this subpart, option 1, using a permanent total enclosure capture system to capture HAP emissions so that they do not exceed the operating limits in Table 4 to this subpart.	Records of the face velocity across any NDO, the size of NDO, the number of NDO, and their proximity to HAP emission sources.
5. Sources complying with the overall control efficiency alternative in § 63.5989(a) that are meeting the percent reduction emission limits in Table 3 to this subpart, option 1, using any other capture system to capture HAP emissions so that they do not exceed the operating limits in Table 4 to this subpart.	Records of operating parameter values for each operating parameter that applies to you.
6. Sources complying with the monthly average alternative without using an add-on control device according to § 63.5988(a) that are meeting the HAP constituent emission limits in Table 3 to this subpart, option 2.	a. A record of Method 311 (40 CFR part 63, appendix A), or approved alternative method, test results, indicating the mass percent of each HAP for puncture sealant used. b. The mass of each puncture sealant used each monthly operating period. c. All data and calculations used to determine the monthly average mass percent for each HAP for each monthly operating period. d. Monthly averages of emissions in the appropriate emission limit format.

TABLE 13 TO SUBPART XXXX OF PART 63.—MINIMUM DATA FOR CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITATIONS FOR PUNCTURE SEALANT APPLICATION AFFECTED SOURCES—Continued

For . . .	You must maintain . . .
7. Sources complying with the monthly average alternative using an add-on control device according to §63.5988(a) that are meeting the HAP constituent emission limits in Table 3 to this subpart, option 2.	a. The same information as sources complying with the monthly average alternative that are not using a control device. b. Records of operating parameter values for each operating parameter that applies to you.

As stated in §63.6008, you must show continuous compliance with the emission limitations for puncture sealant application affected sources according to the following table:

TABLE 14 TO SUBPART XXXX OF PART 63.—CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITATIONS FOR PUNCTURE SEALANT APPLICATION AFFECTED SOURCES

For . . .	You must demonstrate continuous compliance by . . .
1. Each carbon adsorber used to comply with the operating limits in Table 4 to this subpart.	a. Monitoring and recording every 15 minutes the total regeneration stream mass or volumetric flow, and the carbon bed temperature after each regeneration, and within 15 minutes of completing any cooling cycle, and b. Maintaining the total regeneration stream mass or volumetric flow, and the carbon bed temperature after each regeneration, and within 15 minutes of completing any cooling cycle within the operating levels established during your performance test.
2. Each thermal oxidizer used to comply with operating limits in Table 4 to this subpart.	a. Continuously monitoring and recording the firebox temperature every 15 minutes, and b. Maintaining the daily average firebox temperature within the operating level established during your performance test.
3. Other ''add-on'' control or capture system hardware used to comply with the operating limits in Table 4 to this subpart.	Continuously monitoring and recording specified parameters identified through compliance testing and identified in the Notification of Compliance Status report.
4. Sources complying with the monthly average compliance alternative without using an add-on control device according to §63.5989(c) that are meeting the HAP constituent emission limits in Table 3 to this subpart, option 2.	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the HAP constituent emission limits in Table 3 to this subpart, option 2, determined according to the applicable procedures in §63.6000(c) and (d)(1).
5. Sources complying with the monthly average compliance alternative by using an add-on control device according to §63.5989(d) that are the HAP constituent emission limits in Table 3 to this subpart, option 2.	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the HAP constituent emission limits in Table 3 to this subpart, option 2, determined according to the applicable procedures in §63.6000(c), (d)(2) and (3), and (e) through (g).

As stated in §63.6010, you must submit each report that applies to you according to the following table:

TABLE 15 TO SUBPART XXXX OF PART 63.—REQUIREMENTS FOR REPORTS

You must submit a(n)	The report must contain . . .	You must submit the report . . .
1. Compliance report	a. If there are no deviations from any emission limitations that apply to you, a statement that there were no deviations from the emission limitations during the reporting period. If there were no periods during which the CPMS was out-of-control as specified in §63.8(c)(7), a statement that there were no periods during which the CPMS was out-of-control during the reporting period.	Semiannually according to the requirements in §63.6010(b), unless you meet the requirements for annual reporting in §63.6010(f).
	b. If you have a deviation from any emission limitation during the reporting period at an affected source where you are not using a CPMS, the report must contain the information in §63.6010(d). If the deviation occurred at a source where you are using a CMPS or if there were periods during which the CPMS were out-of-control as specified in §63.8(c)(7), the report must contain the information required by §63.5990(f)(3).	Semiannually according to the requirements in §63.6010(b), unless you meet the requirements for annual reporting in §63.6010(f).
	c. If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in §63.10(d)(5)(i).	Semiannually according to the requirements in §63.6010(b), unless you meet the requirements for annual reporting in §63.6010(f).

TABLE 15 TO SUBPART XXXX OF PART 63.—REQUIREMENTS FOR REPORTS—Continued

You must submit a(n)	The report must contain . . .	You must submit the report . . .
2. Immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan..	a. Actions taken for the event	By fax or telephone within 2 working days after starting actions inconsistent with the plan.
	b. The information in § 63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority (§ 63.10(d)(5)(ii)).

You must use the information listed in the following table to determine which emission limit in the HAP constituent options in Tables 1 through 3 to this subpart is applicable to you:

TABLE 16 TO SUBPART XXXX OF PART 63.—SELECTED HAZARDOUS AIR POLLUTANTS

CAS No.	Selected hazardous air pollutants
50000	Formaldehyde
51796	Ethyl carbamate (Urethane)
53963	2-Acetylaminofluorene
56235	Carbon tetrachloride
57147	1,1-Dimethyl hydrazine
57578	beta-Propiolactone
58899	Lindane (all isomers)
59892	N-Nitrosomorpholine
60117	Dimethyl aminoazobenzene
62759	N-Nitrosodimethylamine
64675	Diethyl sulfate
67663	Chloroform
67721	Hexachloroethane
71432	Benzene (including benzene from gasoline)
75014	Vinyl chloride
75070	Acetaldehyde
75092	Methylene chloride (Dichloromethane)
75218	Ethylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
75569	Propylene oxide
77781	Dimethyl sulfate
79061	Acrylamide
79447	Dimethyl carbamoyl chloride
79469	2-Nitropropane
88062	2,4,6-Trichlorophenol
91941	3,3-Dichlorobenzidene
92671	4-Aminobiphenyl
92875	Benzidine
95534	o-Toluidine
95807	2,4-Toluene diamine
96128	1,2-Dibromo-3-chloropropane
96457	Ethylene thiourea
98077	Benzotrichloride
101144	4,4-Methylene bis(2-chloroaniline)
101779	4,4-Methylenedianiline
106467	1,4-Dichlorobenzene(p)
106898	Epichlorohydrin (l-Chloro-2,3-epoxypropane)
106934	Ethylene dibromide (Dibromoethane)
106990	1,3-Butadiene
107062	Ethylene dichloride (1,2-Dichloroethane)
107131	Acrylonitrile
107302	Chloromethyl methyl ether
117817	Bis(2-ethylhexyl)phthalate (DEHP)
118741	Hexachlorobenzene
119904	3,3-Dimethoxybenzidine
119937	3,3-Dimethyl benzidine
122667	1,2-Diphenylhydrazine
123911	1,4-Dioxane (1,4-Diethyleneoxide)
127184	Tetrachloroethylene (Perchloroethylene)
140885	Ethyl acrylate
302012	Hydrazine
542756	1,3-Dichloropropene

TABLE 16 TO SUBPART XXXX OF PART 63.—SELECTED HAZARDOUS AIR POLLUTANTS—Continued

CAS No.	Selected hazardous air pollutants
542881	Bis(chloromethyl)ether
680319	Hexamethylphosphoramide
684935	N-Nitroso-N-methylurea
1120714	1,3-Propane sultone
1332214	Asbestos
1336363	Polychlorinated biphenyls (Aroclors)
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
8001352	Toxaphene (chlorinated camphene)
	Arsenic Compounds
	Chromium Compounds
	Coke Oven Emissions

As stated in § 63.6013, you must comply with the applicable General Provisions (GP) requirements according to the following table:

TABLE 17 TO SUBPART XXXX OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions; notifications.	Yes	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes	Yes.
§ 63.4	Prohibited Activities	Prohibited activities; compliance date; circumvention; severability.	Yes	Yes.
§ 63.5	Construction/Reconstruction.	Applicability; applications; approvals	Yes	Yes.
§ 63.6(a)	Applicability	GP apply unless compliance extension; GP apply to area sources that become major.	Yes	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes	Yes.
§ 63.6(b)(6)	[Reserved]			
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources that Become Major.		No	No.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Comply according to date in subpart, which must be no later than 3 years after effective date; for CAA section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes	Yes.
§ 63.6(c)(3)–(4)	[Reserved]			
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources that Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes	Yes.
§ 63.6(d)	[Reserved]			

TABLE 17 TO SUBPART XXXX OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; and operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes	Yes.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).		Yes	No.
§ 63.6(f)(1)	Compliance Except During SSM.		Yes	No.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Compliance based on performance test; operation and maintenance plans; records; inspection.	Yes	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes	Yes.
§ 63.6(h)	Opacity/Visible Emission (VE) Standards.		No	No.
§ 63.6(i)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt source category from requirement to comply with rule.	Yes	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates		No	No.
§ 63.7(a)(3)	CAA section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes	No.
§ 63.7(b)(1)	Notification of Performance Test.	Must notify Administrator 60 days before the test	Yes	No.
§ 63.7(b)(2)	Notification of Rescheduling.	If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled date.	Yes	No.
§ 63.7(c)	Quality Assurance/Test Plan.	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with: test plan approval procedures; performance audit requirements; and internal and external quality assurance procedures for testing.	Yes	No.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes	No.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	Yes	No.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes	No.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; and conditions when data from an additional test run can be used.	Yes	No.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes	No.
§ 63.7(g)	Performance Test Data Analysis.	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the Notification of Compliance Status report; and keep data for 5 years.	Yes	No.

TABLE 17 TO SUBPART XXXX OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes	No.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard	Yes	Yes.
§ 63.8(a)(2)	Performance Specifications.	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes	No.
§ 63.8(a)(3)	[Reserved]			
§ 63.8(a)(4)	Monitoring with Flares		No	No.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Applies as modified by § 63.5990(e) and (f).	No.
§ 63.8(c)(1)(i)	Routine and Predictable SSM.		No	No.
§ 63.8(c)(1)(ii)	SSM not in SSMP		No	No.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How Administrator determines if source complying with operation and maintenance requirements; review of source operation and maintenance procedures, records, manufacturer's instructions, recommendations, and inspection of monitoring system.	Yes	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation.	Must install to get representative emission and parameter measurements; must verify operational status before or at performance test.	Yes	No.
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.		Applies as modified by § 63.5990(f).	No.
§ 63.8(c)(5)	Continuous Opacity Monitoring Systems (COMS) Minimum Procedures.		No	No.
§ 63.8(c)(6)	CMS Requirements		Applies as modified by § 63.5990(e).	No.
§ 63.8(c)(7)–(8)	CMS Requirements	Out-of-control periods, including reporting	Yes	No.
§ 63.8(d)	CMS Quality Control		Applies as modified by § 63.5990(e) and (f).	No.
§ 63.8(e)	CMS Performance Evaluation.		No	No.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method.	Procedures for Administrator to approve alternative monitoring.	Yes	Yes.

TABLE 17 TO SUBPART XXXX OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.		No	No.
§ 63.8(g)	Data Reduction		Applies as modified by § 63.5990(f).	No.
§ 63.9(a)	Notification Requirements	Applicability and state delegation	Yes	Yes.
§ 63.9(b)(1)-(5)	Initial Notifications	Submit notification 120 days after effective date; notification of intent to construct/reconstruct, notification of commencement of construct/reconstruct, notification of startup; and contents of each.	Yes	Yes.
§ 63.9(c)	Request for Compliance Extension.	Can request if cannot comply by date or if installed best available control technology or lowest achievable emission rate.	Yes	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes	Yes.
§ 63.9(e)	Notification of Performance Test.	Notify Administrator 60 days prior	Yes	No.
§ 63.9(f)	Notification of VE/Opacity Test.	No	No.	
§ 63.9(g)	Additional Notifications When Using CMS.	No	No.	
§ 63.9(h)	Notification of Compliance Status.	Contents; due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change in when notifications must be submitted.	Yes	Yes.
§ 63.9(j)	Change in Previous Information.	Must submit within 15 days after the change	Yes	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension; when to submit to Federal vs. State authority; procedures for owners of more than 1 source.	Yes	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	General Requirements; keep all records readily available; and keep for 5 years..	Yes	Yes.
§ 63.10(b)(2)(i)-(iv)	Records related to Start-up, Shutdown, and Malfunction..	Yes	No.	
§ 63.10(b)(2)(vi) and (x)–(xi).	CMS Records	Malfunctions, inoperative, out-of-control; calibration checks; adjustments, maintenance.	Yes	No.
§ 63.10(b)(2) (vii)–(ix).	Records	Measurements to demonstrate compliance with emission limitations; performance test, performance evaluation, and visible emission observation results; and measurements to determine conditions of performance tests and performance evaluations.	Yes	Yes.
§ 63.10(b)(2) (xii)	Records	Records when under waiver	Yes	Yes.
§ 63.10(b)(2) (xiii)	Records		No	No.
§ 63.10(b)(2) (xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes	Yes.
§ 63.10(b)(3)	Records	Applicability determinations	Yes	Yes.

TABLE 17 TO SUBPART XXXX OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.10(c)	Records		No	No.
§ 63.10(d)(1)	General Reporting Requirements.	Requirement to report	Yes	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority	Yes	No.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.		No	No.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.		Yes	No.
§ 63.10(e)	Additional CMS Reports		No	No.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.	Procedures for Administrator to waive	Yes	Yes.
§ 63.11	Flares		No	No.
§ 63.12	Delegation	State authority to enforce standards	Yes	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes	Yes.
§ 63.14	Incorporation by Reference.	Test methods incorporated by reference	Yes	Yes.
§ 63.15	Availability of Information	Public and confidential information	Yes	Yes.

[FR Doc. 02–12771 Filed 7–8–02; 8:45 am]
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Federal Register

Vol. 67, No. 131

Tuesday, July 9, 2002

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 9, 2002

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Pelagic longline and shark gillnet fisheries; sea turtle and whale protection measures; published 7-9-02

COMMODITY FUTURES TRADING COMMISSION
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Market Oversight Division and Clearing and Intermediary Oversight Division; published 7-9-02

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Air quality implementation plans; approval and promulgation; various States:
West Virginia; published 5-10-02

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California; comments due by 7-15-02; published 6-14-02 [FR 02-15058]

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Gardenia blooms from Hawaii; interstate movement; comments due by 7-15-02; published 5-15-02 [FR 02-12135]

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Small Business Paperwork Relief Act of 2002 (June 28, 2002; 116 Stat. 729)

S. 2578/P.L. 107–199

To amend title 31 of the United States Code to increase the public debt limit. (June 28, 2002; 116 Stat. 734)

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